dubious. Dr. Simun spoke only with Dorothy. She believed Dorothy's allegations of misconduct by Petitioner to be true, speaking as a purported expert on Dorothy's credibility. *See* Appendix p.91a. Dr. Simun never examined Petitioner. Nor was there any evidence showing that Dr. Simun had ever accurately diagnosed anyone or accurately predicted a patient's future behavior. Moreover, telltale evidence of Dorothy's asserted depression, like medication, poor social skills, reclusiveness or otherwise, were absent. As Dr. Simun conceded, Dorothy's dejection might have been occasioned by her recent move to North Dakota from San Antonio, a sheltered family life with Respondent Helen Pinter and her step-father, Gregory Pinter, or other causes unconnected with Petitioner. *See* Appendix p.99a. Indeed, Dr. Simun conceded the possibility, in light of the strife-filled relations between Petitioner and Respondent, that Dorothy's allegations were orchestrated by Respondent. *See* Appendix p.119a. The foundation of the District Court's decision was a belief in Dorothy's allegations and a disbelief in Petitioner's unequivocal denials.

The District Court terminated all visitation between Petitioner and Dorothy on February 21, 2003. *See* Appendix p.16a. Petitioner was directed to undergo psychological therapy and counseling as conditions to reinstitution of visitation. The District Court also endowed Dorothy with an absolute veto power over visitation. *See* Appendix p.19a.

The North Dakota Supreme Court affirmed the District Court's decision terminating visitation on November 13, 2003. It upheld the finding of misconduct by Petitioner. *See* Appendix p.8a. It accepted as truthful Dorothy's allegations. *See* Appendix p.8a. It bypassed as premature any review of Dorothy's visitation veto. *See* Appendix p.8a. The District Court ruling was then finalized in a Second Amended Judgment signed May 21, 2004.

Following Respondent's decampment to Germany with her third husband and Dorothy in violation of the District Court's custody order, Petitioner filed a Motion to Reinstitute Unsupervised Visitation and Evidentiary Hearing in the District Court of Grand Forks County, North Dakota on August 30, 2004. *See* Appendix p.33a. The Motion requested the District Court to reinstitute unsupervised visitation with Dorothy Litoff, and to hold an evidentiary hearing if the issue were in doubt. Respondent, as Dorothy's legal guardian and legal custodian, decided not to oppose Petitioner's Motion by declining to file any opposition.

Petitioner filed a Motion for Default Judgment on October 12, 2004. *See* Appendix p.23a. Again, Respondent decided not to oppose the Motion by declining to file any opposition. The District Court dismissed Petitioner's uncontested motions without a hearing in a succinct order filed on October 28, 2004. *See* Appendix p.3a. The District Court faulted Petitioner for failing to complete all of the assessments and evaluations recommended in its antecedent ruling on February 21, 2003: a psychiatric examination, a mental health assessment and assessment for inclusion in a sexual offenders program, and medication. The District Court further reasoned that Dorothy had not consented to a reinstitution of visitation as required in its earlier order, although her current sentiments were unknowable without calling her as a witness. Accordingly, the District Court concluded "there is no merit in rearguing matters that have been previously decided by the court and affirmed on appeal." *See* Appendix p.3a. The District Court declined to address Petitioner's request for an evidentiary hearing to demonstrate changed circumstances or the motion for default judgment. The District Court also failed to address Petitioner's challenge to the use of frightfully unreliable psychological and psychiatric expert testimony in his case.

On appeal, Petitioner argued, *inter alia,* that the District Court had trampled threefold due process rights: namely, to an evidentiary hearing to determine whether there were changed circumstances warranting reinstitution of unsupervised visitation; to a reasonably reliable determination of whether visitation would threaten Dorothy's mental or physical health; and, to participate in the rearing of his daughter on terms not opposed by her mother. The Supreme Court of North Dakota summarily affirmed, stating only that the District Court had not abused its discretion under North Dakota law in denying a default judgment. It tacitly rejected Petitioner's due process claims without articulating reasons. *See* Appendix p.1a.

## Reasons for Granting the Writ

### I. The North Dakota Supreme Court Flagrantly Violated this Court's Due Process Precedents in Refusing Petitioner's Request for an Evidentiary Hearing to Show Changed Circumstances that would Justify Unsupervised Visitation

In Mathews v. Eldridge, 424 U.S. 319, 334-335 (1976), this Court established a three part test for determining whether due process had been satisfied when the government curtails a constitutionally protected liberty interest. Writing for the majority, Justice Lewis Powell instructed:

> "First, the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or

> substitute procedural requirement would entail." [citation omitted][1]

The District Court egregiously flouted Mathews in dismissing Petitioner's Motion for an Evidentiary Hearing to determine whether changed circumstances justified reinstituting unsupervised visitation with Dorothy.

*Petitioner's Private Interest*

Petitioner brought his motion to re-evaluate his visitation status under NDCC § 14-09-6.6(3)(a), which allows for review of a custody order inside the customary two-year window where there is "persistent and willful denial or interference with visitation." Respondent had flagrantly breached the District Court's custody order by denying Petitioner Dorothy's new address and school information in Germany.[2] In filing his Motion, Petitioner invoked his fundamental constitutional liberty interest in the rearing of his daughter. *See* Stanley v. Illinois, 405 U.S. 645, 651 (1972) ("The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection."); Troxel v. Granville, 530 U.S. 57 (2000). Petitioner's interest in participating in the raising of Dorothy is of the highest order.

United States Courts of Appeals have repeatedly held that a parent's interest in rearing his child commands scrupulous procedural and substantive safeguards. *See*

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[1] *See also* City of Los Angeles v. David, 538 U.S. 715 (2003); U.S. v. James Daniel Good Real Property, 510 U.S. 43 (1993); Medina v. California, 505 U.S. 437 (1992).

[2] Respondent was held in contempt by the Grand Forks District Court on September 7, 2004 for failing to provide Petitioner with Dorothy's current address and phone number as required by the custody order. *See* Appendix p.5a.

Suboh v. Suffolk, 298 F.3d 81 (1st Cir.2002)(custody dispute between natural mother and grandparents); Ramos v. Town of Vernon, 353 F.3d 171 (2nd Cir.2003)(mother's challenge to town curfew); Gruenke v. Seip, 225 F.3d 290 (3rd Cir.2000)(parents' challenge of public school coach's mandated pregnancy test); Doe v. Heck, 327 F.3d 492 (7th Cir.2003)(parents' challenge to state interrogation of students); Franz v. U.S., 707 F.2d 582 (D.C.Cir. 1983)(father's challenge to government placing his children into federal witness protection); Littlefield v. Forney Independent School District, 268 F.3d 275 (5th Cir.2001)(parents' challenge of public school uniforms); Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Cir. 1998)(parents' challenge to town curfew). As these cases illustrate, a parent's liberty interest in the care and rearing of his child frequently trumps countervailing non-trivial state interests. Indeed North Dakota acknowledged Petitioner's compelling interest in visitation by granting Petitioner the opportunity to seek re-examination of the issue in the wake of Respondent's contumacious flight. Petitioner's parental interest is especially urgent because Dorothy is approaching 17 years of age, one year short of emancipation. Thus, a denial of visitation to Petitioner at this late date is tantamount to a permanent termination of his ability to participate in his daughter's upbringing.

*Risk of Erroneous Deprivation and the Probable Value of Additional Safeguards*

NDCC § 14-09-6.6(3)(a) does not explicitly require an evidentiary hearing. But without a hearing, the risk of an erroneous deprivation of Petitioner's liberty interest in visitation with his daughter was alarming:

1. Approximately two years had elapsed since the District Court's hearing which culminated in fact-finding and a termination of Petitioner's visitation rights. During the interim, Dorothy's opinions and needs may have changed (typical for a 16-year old), though neither Petitioner nor the District Court has had any way to ascertain her thoughts since his visitation was terminated and Respondent decamped to Germany in violation of the District Court's custody order. Further, Dorothy's statements were the lynchpin of the District Court's entire earlier opinion denying Petitioner visitation including crowning Dorothy with an absolute veto power.

2. Similarly, earlier speculations about Dorothy's development or personality may have been discredited by time. Petitioner requested an evidentiary hearing with the clear intent to ascertain Dorothy's sentiments. Petitioner tried in vain to contact Dorothy via letters and cards. Each overture elicited no response, probably because of Respondent's antagonism.

3. Respondent's flight to Germany with Dorothy without prompt notice to Petitioner of her new address and school violated the terms of the custody order and created another new circumstance.

4. Petitioner's testimony at an evidentiary hearing would decisively establish that reinstituting unsupervised visitation with his daughter Dorothy would not endanger either her physical or emotional

health, the North Dakota standard for denying visitation.[3]

5. Respondent offered no evidence that Dorothy's sentiments had not changed had not changed as suggested by Petitioner.

The District Court confronted Petitioner with a classic Catch-22 situation: he needed to establish Dorothy's sentiments regarding his visitation to establish changed circumstances, yet the only way he could ascertain her opinions would be through her compelled testimony at an evidentiary hearing. The District Court's ruling made no attempt to ascertain Dorothy's wishes, despite their criticality to its decision to clip all visitation. The ruling ridiculously faulted Petitioner, who has had no contact with his daughter for more than two years, for failing to present any evidence "that Dorothy has consented to any contacts at this point," or "that she consents to unsupervised visitation." *See* Appendix p.3a. Petitioner had no means of presenting the evidence the ruling demanded because the District Court had terminated all visitation and phone contact and Respondent had probably intercepted and destroyed his

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[3] Petitioner provides an intellectually and culturally enriching presence for his daughter. In Texas, his tutelage placed Dorothy in accelerated educational programs. During the 2001 summer vacation, Petitioner and Dorothy visited ten state capitals in the Upper Midwest, as well as large cultural centers like Chicago, Milwaukee, Minneapolis, Cleveland, St. Louis, and Kansas City. *See* Appendix p.36a. Father and daughter visited several zoos, botanical gardens, and various other museums and historical locations, such as Greenfield Village in Michigan, U.S. Grant's home in St. Louis, Missouri, Custer's home and a recreation of a Mandan Indian village in Ft. Lincoln, North Dakota, as well as Abraham Lincoln's home, law office and tomb in Springfield, Illinois. *See* Appendix p.36a. Petitioner broadens Dorothy's cultural and intellectual horizons in parallel ways, by encouraging books, magazines, newspapers, drama, a familiarity with current events, and knowledge of her Russian, Polish, Jewish and Filipino ancestry, including culture, history and religion. It speaks volumes that Dorothy's academic performance has deteriorated since Petitioner's visitation rights ended. *See* Appendix p.153a.

written communications with Dorothy. Without an evidentiary hearing, the risk of misjudging Dorothy's attitude towards visitation by Petitioner was overwhelming. And her attitude was the centerpiece of the District Court's prior termination of visitation.

An evidentiary hearing would have eliminated the risk entirely without burdening the State. The hearing would have been unelongated. Dorothy could have given testimony via an affidavit, video or audio conferencing, instant messaging, or other technological marvel. Moreover, the District Court's denial of the hearing because Dorothy's current sentiments were unknowable to Petitioner rewarded Respondent for violating her legal obligations.

*The Government Interest*

The District Court failed to advance a single fiscal or administrative burden that Petitioner's evidentiary hearing would have entailed to ascertain the wishes of Dorothy. Further, the government interest was in a correct application of North Dakota's law as applied to Petitioner's visitation motion, which pivoted on knowing Dorothy's feelings. That interest was subverted, not bolstered, by the District Court's denial of an evidentiary hearing.

Certiorari should be granted correct the North Dakota Supreme Court's clear disregard of Mathews, *supra*. To this very day, the District Court and the North Dakota Supreme Court are supremely ignorant of Dorothy's wishes regarding her visitation. Without that knowledge, the North Dakota courts failed to answer Justice Byron White's central question in Stanley: "What is the state interest in separating children from their fathers without a hearing designed to determine whether the father is unfit in a particular disputed case?" Stanley at 652-653.

## II. The District Court's Reliance on Alarmingly Unreliable Expert Psychological and Psychiatric Testimony to Deny Petitioner Unsupervised Visitation Violated Constitutional Due Process

The due process clause creates a heightened standard of reliability for evidentiary rules when the fundamental interest of a parent in visitation or other participation in the upbringing of his child is at stake. *See* Stanley, supra, at 650-651.

In Chambers v. Mississippi, 410 U.S. 284 (1973), this Court overturned a murder conviction on the ground that the trial court's application of a Mississippi hearsay rule denied the defendant his constitutional right to due process. Justice Lewis Powell, writing for the majority, elaborated that both the accused and the State, "must comply with the established rules of procedure and evidence designed to assure both fairness and **reliability** in the ascertainment of guilt and innocence." [emphasis added] Id. at 302. Similarly, if wildly unreliable testimony is employed by the State to deny a parent visitation rights, then due process is offended.[4]

In Santosky v, Kramer, 455 U.S. 745 (1982), this Court held that due process compelled a "clear and convincing" evidence standard in lieu of the customary preponderance of evidence threshold when a state seeks completely and irrevocably to sever rights of parents over their natural children. Justice John Paul Stevens, writing for the majority, explained:

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[4] This Court has routinely held in criminal cases that defendants must be afforded due process protection against unreliable identifications arising from lineups, photographic arrays and other police identification procedures. *See* United States v. Wade, 388 U.S. 218 (1967); Neil v. Biggers, 409 U.S. 188 (1972); United States v. Ash, 413 U.S. 300 (1973).

> "The fundamental liberty interest of natural parents in the care custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." Id. at 753-753.

In Petitioner's case, the use of unreliable psychiatric and psychological evidence to sever visitation permanently failed the Santosky test of procedural fairness demanded by the Fourteenth Amendment.

To prove changed circumstances, Petitioner requested an evidentiary hearing in his Motion to Reinstitute Unsupervised Visitation. Petitioner asserted that due process condemned the use of the bogus unreliable expert opinion of Dr. Ann Simun that underwrote the District Court's predecessor ruling of February 21, 2003. The identical suspect expert testimony was the keystone of the District Court's second visitation rejection, a ruling that was affirmed by the North Dakota Supreme Court.

The expert testimony of Dr. Simun vouched for Dorothy's credibility and unfairly prejudiced the District Court to believe Dorothy's allegations to the detriment of Petitioner. Further, Dr. Simun erroneously testified as an

expert that Petitioner's visitation without Dorothy's consent would threaten her with emotional or psychological harm, despite the absence of scientific validation for that gross speculation. The erroneous admission of Dr. Simun's testimony on both counts created an unconstitutionally high risk that the District Court might err in exercising discretion over the visitation issue.

*Dr. Simun's Testimony before the District Court Impermissibly Vouched for Dorothy's Credibility*

Dorothy's statements to Dr. Simun were the exclusive foundation for the latter's opinion that Petitioner's conduct was the principal cause of Dorothy's depression. Dr. Simun testified that she believed Dorothy's allegations to be true without offering any credentials that would qualify her as an expert to make that judgment. *See* Appendix 91a.

United States Courts of Appeals have ruled that expert testimony, especially that of psychologists and psychiatrists, is impermissible where, as here, the testimony only vouches for the truthfulness of another. In U.S. v. Velarde, 214 F.3d 1204 (10th Cir. 2000), the defendant challenged the district court's admission of the expert testimony of a psychologist and a pediatrician regarding the veracity of a child alleging sexual abuse. The Tenth Circuit reversed and remanded, finding that the expert testimony offered by both doctors impermissibly vouched for the credibility of the accusing child in violation of Rule 702 of the Federal Rules of Evidence. The Velarde decision rested on the Tenth Circuit's previous ruling in U.S. v. Charley, 189 F.3d 1251, 1267-1268 (10th Cir. 1999), where the Court explained:

> "In general, expert testimony which does nothing but vouch for the credibility of another witness encroaches upon the jury's vital and exclusive function to make credibility determinations, and therefore does not 'assist the trier of fact' as required by Rule 702. [citations omitted] Indeed, the government concedes that, in this case, testimony to the effect that D.J. and J.J. were 'telling the truth ... would be impermissible.' Appellee's Br. at 26. Most courts that have considered the issue have concluded that expert testimony, based on the statements of the alleged victim, that sexual abuse in fact occurred is inadmissible under Fed.R.Evid. 702 (or similar military or state evidentiary rules) because, in such cases, the expert offering the opinion is merely vouching for the credibility of the alleged victim. Thus, if Dr. Ornelás largely based her opinion on the statements of the girls, then under the foundation (or lack thereof) presented in this case, we consider it inadmissible. Therefore, regardless of whether Dr. Ornelas's conclusion was based on the girls' medical history or on their allegations of abuse, its admission was erroneous."

The Eighth Circuit echoed the Tenth Circuit in U.S. v. Azure, 801 F.2d 336 (8th Cir. 1986), and U.S. v. Whitted, 11 F.3d 782 (8th Cir. 1993). In both cases, the Court overturned the District Courts' child sexual abuse convictions, ruling that the lower court had impermissibly allowed testimony that vouched for the credibility of the accusers. The Court preached caution in such cases:

> "We agree that in these special circumstances some expert testimony may be helpful, but putting an impressively qualified expert's stamp of truthfulness on a witness' story goes too far... putting his stamp of believability on Wendy's entire story, Dr. ten Bensel essentially told the jury that Wendy was truthful in saying that Azure was the person who sexually abused her." Azure at 340-341.

The precedents of the Tenth and Eighth Circuits are instructive in Petitioner's case.[5] When questioned about Dorothy's allegations of abuse before the Grand Forks District Court, Dr. Simun stated unequivocally "My opinion is that she was being honest with me." *See* Appendix p.91a. Her enumerated reasons, ranging from divining body language to interpreting Dorothy's willingness to attend sessions, for believing Dorothy's chronicle was unanchored to specialized scientific knowledge. *See* Appendix p.89a. Just as the Eighth Circuit instructed in Azure, Dr. Simun's voucher for Dorothy's truthfulness put her stamp of believability on Dorothy's entire story, from misconduct allegations to their supposed ill-effects, essentially telling the District Court that the entire alleged account was

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[5] Prior to the termination of Petitioner's visitation by the Texas court, an Administrative Law Judge investigated Dorothy's allegations. The Court recognized the danger of relying upon an "expert" opinion vouching for a witnesses credibility: "In the end the question is not whether the child's statements are credible, but whether the conclusions of the child protection social worker who interviewed the child and obtained other information which was submitted to the [Grand Forks County Child Protection] Team for its consideration are credible. The evaluation is difficult at best considering that for both the accused and the administrative law judge the child protection social worker is the source of all information, and, having made the conclusions which are reviewed upon the hearing of the appeal, understandably presents the information to support those conclusions." *See* Appendix p.46a.

truthful.[6] While the trial judge subsequently interviewed Dorothy in chambers with counsel present, Dr. Simun's "expert" opinion prejudicially inclined the District Court to believe Dorothy's narrative.

*The Dubious Scientific Basis of*
*Psychological and Psychiatric Testimony*

When asked whether she would recommend continuation of Petitioner's unsupervised visitation, Dr. Simun opined:

> "I believe that the best interest situation for Dorothy emotionally would be to allow her to have control over her contact with her father...My recommendation to her and to her parents has been to not require her to have a visit if she feels that it's unwanted and I continue to feel that it is the best thing." *See* Appendix p.103a.

Dr. Simun's basis for this recommendation was her own opinion that Dorothy had been abused because of her belief in the teenager's veracity: "As far as I am concerned, she was a victim of sexual maltreatment. And that's an opinion. And it's my opinion." *See* Appendix p.104a. She offered no test results or clinical experiences to base her visitation recommendation in science, nor did she offer any evidence that her diagnoses of children or recommendations regarding custody or visitation in similar cases had been

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[6] The District Court also heard the testimony of Tammy Knutson, the state-licensed social worker who also testified before the Administrative Law Judge. Ms. Knutson also impermissibly testified that she believed Dorothy to be telling the truth. (1.16-17.03 Trans. p. 246)

reliable.[7] Dr. Simun had not interviewed Petitioner, yet the District Court overruled Petitioner's objections that Dr. Simun was not qualified to make a recommendation "as to what the visitation should be with someone she ... has never met."[8] *See* Appendix p.103a. Dr. Simun's non-expert "expert" testimony regards visitation created a high risk of error by the District Court inclined to rely decisively on her opinion.

The scientific value and reliability of the testimony of mental health professionals, like psychologists and psychiatrists, has been universally questioned, especially when used in custody and visitation disputes. In a 1990 article for the Golden Gate University Law Review, Susan Romer argued that when testifying on child sexual abuse "[p]sychologists must develop national guidelines and protocols that are consistent and measurable to test whether or not abuse has occurred... However, these clinical methods may never be so "measurable" and "scientific" as to satisfy the Kelly-Frye test [the prevailing California standard in 1990]; they cannot produce the certainty of fingerprint analysis." *See* Romer, Child Sexual Abuse in Custody and Visitation Disputes: Problems, Progress, and Prospects, 20 Golden Gate U.L.Rev. 647, 678-679 (1990).

SMU professor Daniel Shuman, in a 1997 article for Family Law Quarterly, voiced consternation over the

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[7] Dr. Simun alluded that Dorothy suffered from "major depression", but declined to identify a formal psychological disorder. Neither did she advocate psychiatric or medicinal therapy. Dr. Simun pointed to no cases similar to Dorothy's. She admitted that other possible explanations for Dorothy's alleged "major depression" were her racial background, her transition to high school, her strict family life with Respondent and Gregory Pinter, and her family's move from San Antonio to Grand Forks.

[8] The District Court also allowed Ms. Knutson to testify that she agreed with Dr. Simun's recommendation for the termination of Petitioner's unsupervised visitation, despite the repeated objections by Petitioner that Ms. Knutson was completely unqualified "to make any recommendation as to visitation". (1.16-17.03 Trans. p. 260)

prevailing use of expert psychiatric and psychological testimony: "Disappointing as it is to acknowledge, in an age and nation where expertise are so venerated, child custody and other behavioral science experts generally cannot reasonably demonstrate that their ability to make accurate pre-or postdictions is any greater than that of an ordinary mind, or that their expertise is more effective than that of another expert or non-expert." *See* Shuman, What Should We Permit Mental Health Professionals to Say About "The Best Interests of the Child"?: An Essay on Common Sense, Daubert, and the Rules of Evidence, 31 Fam.L.Q.551, 567 (1997). Shuman relies primarily on two sources in reaching his conclusion: the American Psychiatric Association's amicus brief in Barefoot v. Estelle, 463 U.S. 880 (1983), and, the best interests standard in deciding custody cases.

In Barefoot, a psychiatrist in the initial trial answered hypothetical questions related to the *habeas corpus* petitioner, opining that there was a "'one hundred percent and absolute' chance" that he would commit future criminal acts of violence. An amicus brief filed by the American Psychiatric Association (A.P.A.) adduced voluminous research showing that "long term predictions of future dangerousness were inaccurate and more often than not wrong, and that 'even under the best of conditions, predictions of long-term future dangerousness are wrong in at least two out of every three cases.'"[quoting Brief for the American Psychiatric Association as Amicus Curiae in Support of Petitioner, at 9, Barefoot, supra.] 31 Fam.L.Q. at 559. The statements of the A.P.A. are damning. Shuman is right to draw a straight line from that admission by the premier psychiatric organization in the United States to the use of mental health testimony as expert testimony in child custody matters. If such psychological and psychiatric testimony is wrong two-thirds of the time in predicting future dangerousness, Shuman is certain the percentage is equally bleak when deciding the best interests of a child:

> "To assess the ability of mental health professionals to make accurate predictions requires that the outcome (i.e., the best interests of the child) to be 'operationalized,' or described in a fashion capable of measurement to test the validity and reliability of these predictions. Since the best interests standard is by definition indeterminate, it is incapable of measuring a mental health professional's ability to predict outcomes. Apart from the problem of defining best interests so that predicted outcomes can be operationalized and tested, research on the predictive abilities of mental health professionals does not support claims of [omniscience] about the best interests of the child." 31 Fam.L.Q. at 567.

Shuman's analysis demonstrates the impossibility of such expert testimony meeting a reliability standard erected by due process when parental child rearing rights are at stake. Shuman persuasively points to a survey of family law attorneys disclosing that a majority "do not regard mental health professional input as helpful in reaching appropriate custody determinations, but they present such testimony largely to counter their opponent's experts." 31 Fam.L.Q. at 566, citing Felner, Child Custody Resolution: A Study of Social Science Involvement and Impact, 18 Prof.Psychol.:Res.& Prac. 468 (1987).

In a 2001 article for the Illinois Bar Journal, H. Joseph Gitlin addressed these same concerns as they apply to Illinois. Gitlin urges that a mental health professional should not be considered an expert witness since that testimony is "merely testimony of what a witness observed, heard, etc., and as such is not entitled to any greater weight than lay testimony of the same kind. Moreover, the 'experts' who

make recommendations in child-custody cases... are typically no more competent to make good custody decisions than a seasoned family court judge." *See* Gitlin, Mental Health Professionals in Child Custody Cases: Giving "Expert" Testimony Its Due, 89 Ill.B.J. 350 (2001). The testimonies of psychologists and psychiatrists were routinely given expert weight when they would testify to the best interests or other issues without any scientific basis, frequently serving more as credentialed relationship witnesses than experts. Gitlin expounds the central contradiction: "It is not surprising, then, that the appellate court in Dilley instructed that the mental-health professional's testimony was entitled to great weight. In Dilley, however, the psychologist did not testify as to what he learned scientifically from well-established psychological tests; rather he testified to what he observed and heard.[citations omitted]" 89 Ill.B.J. at 354.

Gitlin is fortified by a second article by Shuman published in 2002: "The lesson that Frye v. United States, 293 F.1013 (1923), and Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993), teach is that an expert's opinions 'are not admissible just because somebody with a diploma says it is so.'" *See* Shuman, The Role of Mental Health Experts in Custody Decisions: Science, Psychological Tests, and Clinical Judgment, 36 Fam.L.Q.135, 139 (2002), citing United States v. Ingraham, 42 M.J.218, 226 (1995). Shuman explores the fallibilities of the tests psychologists and psychiatrists use to evaluate their patients, especially children, in advance of court testimony. Shuman again advocates rigorous vetting of the scientific process associated with a mental health professional's expert testimony in advance of its admission into the record. He lectures: "By virtue of their qualifications alone, experts do not provide any assurance that their opinions rest on reliable methods and procedures. Instead relying on experts without testing the reliability of their methods and procedures cloak experts' value

judgments under the veil of science and risks that their personal and professional characteristics bias the evaluation and the importance of information learned. The scientific method is intended to avoid such problems." 36 Fam.L.Q. at 160.

A respected psychiatrist, Dr. Margaret Hagen, echoes these views in her book, Whores of the Court, 1997, Harper Collins, New York. She details the use of expert testimony by psychiatrists and psychologists in the American legal system, including child custody cases. Whores, (passim) "Chapter 8- In the Best Interests of the Child". Like Shuman and Gitlin, she is adamant: "What if the foundation of the clinician's belief is strictly personal, manifestly unobjective, and clearly nonscientific? Then, whatever the level of general acceptance, that belief does not belong in courtrooms masquerading as expert scientific testimony." Whores, pg. 298.[9]

In sum, the consensus of scientific opinion discredits the idea of expert testimony regarding child custody or visitation disputes. Due process should follow science and thus prohibit such bogus experts because they foster erroneous fact-finding and predictions. Certiorari should be granted to correct the North Dakota Supreme Court's disregard of this Court's precedents regarding due process and the imperative of reliable expert testimony when fundamental parental rights are at stake.

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[9] These authors are but the tip of an iceberg of legal scholars and mental health professionals who have openly challenged the use of psychiatric and psychological expert testimony that addresses a child's best interests. *See e.g.*, Wah, The Changing Nature of Psychological Expert Testimony in Child Custody Cases, 86 Judicature 152 (2002); Melton, The Clashing of Symbols: Prelude to Child and Family Policy, 42 Am. Psych. 345 (1987); Mnookin, Child Custody Adjudication: Judicial Functions in the Face of Indeterminacy, 39 Law & Contemp. Probs. 226 (1975); Mischel, Personality and Assesment, (1968); Goldstein, Freud, and Solnit, Beyond the Best Interests of the Child, (1979).

## III. The North Dakota Supreme Court Flagrantly Disregarded this Court's Precedents Regarding Parental Participation in the Rearing of their Children

This Court has long recognized "the liberty of parents and guardians to direct the upbinging and education of children under their control"[10], short of the state removing a child for proven neglect or abuse. In Stanley, this Court amplified:

> "The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.' [citation omitted]" Id. at 651.

In Troxel, *supra.*, this Court affirmed the judgment of the Washington Supreme Court that a Washington statute applied to allow non-parental third-party visitation at a court's discretion was a violation of the parents' due process right to make decisions concerning the care, custody, and control of their children. This Court reasoned that "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."[citation omitted] Id. at 68-69. Justice Sandra Day O'Connor, writing

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[10] Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 534-535 (1925). *See also* Meyer v. Nebraska, 262 U.S. 390, 399-400 (1923).

for the majority, more forcefully declared that "the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made." Id. at 72-73. *See also* Prince v. Massachusetts, 321 U.S. 158 (1944); Wisconsin v. Yoder, 406 U.S. 205 (1972); Stanley, *supra.* at 652-653; Quilloin v. Walcott, 434 U.S. 246 (1978); Parham v. J.R., 442 U.S. 584 (1979); Santosky, *supra*; Washington v. Glucksberg, 521 U.S. 702 (1997).

The Troxel rationale fits this case like a glove. Petitioner filed two motions with the District Court seeking to reinstate his visitation rights. Neither motion was opposed by Respondent. In the eyes of the law and for the purposes of child custody or visitation, Respondent has consented to the request for unsupervised visitation with Dorothy by non-opposition to the assertions, arguments and modifications to the custody order advanced by Petitioner. In other words, the law of North Dakota, like other states, treats Respondent's failure to respond as consent to Petitioner's unsupervised visitation with Dorothy.[11] Absent a showing by the state that Petitioner and Respondent are unfit parents, the District Court was obligated by Troxel to give deference to that joint parental decision.

The District Court dismissed the unopposed motions of Petitioner without a hearing on the apparent theory that the continued complete curtailment of Petitioner's visitation rights would be advantageous to Dorothy. The North Dakota Supreme Court affirmed. Its decision impaired the protected liberty interest of Petitioner as decreed in Troxel

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[11] *See* Matter of Gober, 100 F.3d 1195 (5th Cir. 1995); Meehan v. Snow, 494 F.Supp. 690 (S.D.N.Y.1980); The Firestone Tire & Rubber Co. v. Marlboro Cotton Mills, 278 F. 816 (E.D.S.C.1920); In re Edie, 314 B.R. 6 (B.D.Utah 2004); In re Stewart, 280 B.R. 268 (B.M.D.Fla. 2001); In re Naemi, 128 B.R. 273 (B.S.D.Cal. 1991); Schostak v. Wright, 2003 WL 1960581 (S.D.NY).

to participate in Dorothy's upbringing on terms acceptable to both parents. The District Court lacked constitutional power, absent a showing of unfitness, to disturb that joint parental visitation choice on the theory that a "better" arrangement for Dorothy would be severance of contact with Petitioner.

In addition, Petitioner's influence on Dorothy would be beneficial and pivotal to her maturation as a successful and productive member of society and to her own happiness. An article in the Ohio State Law Journal found that "[a] substantial body of research supports the conclusion that continued contact with both parents is beneficial to children... The tendency of divorced fathers to withdraw may have serious effects on children... As Clingempeel and Reppucci observed, the child whose father remains involved may have 'a larger array of positive characteristics to model and a greater variety of cognitive and social stimulation.'" Scott & Derdeyn, Rethinking Joint Custody, 45 Ohio St. L.J. 455 at 488-490 (1984). Dr. Richard A. Warshak fortified that conclusion: "Children generally do better after divorce when both parents continue to participate in child-rearing." *See* Divorce Poison, Warshak, (2001), p.2. North Dakota courts have endorsed this belief by using joint custody as the starting point to determine how custody should be divided. Even if sole custody is ultimately ordained, the non-custodial parent enjoys a presumptive right to visitation absent proof of threatened harm to the child. *See* K.L.G. v. S.L.N., 622 N.W.2d 232 (ND 2001).

Petitioner's contribution to Dorothy's psychological maturation and segue from adolescence to adulthood counted overwhelmingly in favor of visitation. As elaborated in the studies of Clingempeel and Reppucci, and Emery, Hetherington, and Fisher, the role of the father is critical to the full maturation of a child's social and academic

faculities. *See* Clingempeel & Reppucci, Joint Custody after Divorce: Major Issues and Goals for Research, 91 Psychological Bulletin 102 (1982); Emery, Hetherington & Fisher, Divorce, Children and Social Policy (1983). Dorothy is fast approaching eighteen, and thus, her legal emancipation from parental guidance and influence. Petitioner's window of opportunity to positively affect his daughter's life is closing.

Petitioner acknowledges that the liberty interest recognized by this Court in Troxel could be terminated consistent with due process if North Dakota asserted guardianship of Dorothy after a finding of parental unfitness based on a hearing that satisfied due process. But that has not been done. North Dakota may not presume "unfitness solely because it is more convenient to presume than to prove." Stanley. at 658. Certiorari is thus warranted to correct the North Dakota Supreme Court's disregard of Troxel.

## Conclusion

For these various reasons, this petition should be granted.

Respectfully Submitted,

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**This opinion is subject to petition for rehearing**
**Filed 4/6/05 by Clerk of Supreme Court**
**IN THE SUPREME COURT**
**STATE OF NORTH DAKOTA**

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2005 ND 73

---

Robert S. Litoff, Plaintiff and Appellant

v.

Helen Pinter, Defendant and Appellee

---

No. 20040330

---

**[Entered: April 6, 2005]**

Appeal from the District Court of Grand Forks County, Northeast Central Judicial District, the Honorable Bruce E. Bohlman, Judge.

AFFIRMED.

Per Curiam.

Bruce Fein (argued), Bruce Fein & Associates, 910 17th Street N.W., Suite 800, Washington, D.C. 20006, and Thomas V. Omdahl (on brief), 424 DeMers Avenue, Grand Forks, N.D. 58201-4508, for plaintiff and appellant.

Helen Pinter. No appearance.

**Litoff v. Pinter**

**No. 20040330**

**Per Curiam.**

[¶1] Robert Litoff has appealed from a district court order denying his motion to reinstate unsupervised visitation with his daughter. See Litoff v. Pinter, 2003 ND 172, 670 N.W.2d 860. The order is affirmed under N.D.R.App.P. 35.1(a)(4).

[¶2] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Dale V. Sandstrom
Mary Muehlen Maring

IN DISTRICT COURT, GRAND FORKS COUNTY,
NORTH DAKOTA

| | | |
|---|---|---|
| Robert S. Litoff, | ) | |
| | ) | |
| Plaintiff, | ) | Civil No, 02-C-1352 |
| | ) | ORDER DENYING MOTION |
| vs. | ) | FOR REINSTATING |
| | ) | UNSUPERVISED |
| Helen Pinter, | ) | VISITATION |
| | ) | |
| Defendant | ) | |

**[ENTERED: October 28, 2004]**

The plaintiff makes a motion to reinstate unsupervised visitation with his daughter, Dorothy, now 16 years of age. However, the plaintiff submits no evidence of any kind that he has had a psychiatric examination, as recommended by Dr. Trevino in Texas, nor has he had a mental health assessment in North Dakota, nor an assessment for inclusion in a sexual offenders treatment program, nor that he has complied with any recommendations from such evaluations and assessments, including medication. The evaluation done by the Texas psychologist, Dr. Trevino, recommended a psychiatric evaluation to determine if psychotropic medications would be therapeutic in treating him. Dr. Trevino found that the plaintiff was suffering from paranoia and mixed personality disorder. Finally, the judgment entered by this court and affirmed by the North Dakota Supreme Court, found that Dorothy should have the right to refuse visitation in view of the plaintiffs conduct. There is no showing that Dorothy has consented to any contacts at this point, and certainly no indication that she consents to unsupervised visitation. The plaintiff has wholly failed to show that he has complied with the court's directions, and there is no merit in

rearguing matters that have been previously decided by the court and affirmed on appeal. It is therefore

**ORDERED** that the motion to reinstate unsupervised visitation is **DENIED**.

Dated this 21st day of October, 2004.

BY THE COURT:

/s/
Bruce E. Bohlman, District Judge

cc: Thomas Omdahl
Bruce Fein
Helen Pinter

**IN DISTRICT COURT,**
**GRAND FORKS COUNTY, NORTH DAKOTA**

| | | |
|---|---|---|
| Robert S. Litoff, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | Civil No. 02-C-1352 |
| | ) | MEMORANDUM |
| Helen Pinter, | ) | DECISION & ORDER |
| | ) | |
| Defendant. | ) | |

**[ENTERED: September 10, 2004]**

The plaintiff brought an Order to Show Cause proceeding to have contempt of court for refusal to provide him with a current address and telephone number of the minor child. The current version of the judgment, in paragraph 3A(e) requires the defendant to notify the plaintiff of any change in the address and telephone number of the minor child. Plaintiff's counsel attempted to obtain the information through defendant's counsel, Ms. Patti Jensen. The information was not forthcoming and plaintiff brought this proceeding to obtain the information.

The second amended judgment was entered on May 21, 2004. On May 28, 2004, Mr. Omdahl, representing Mr. Litoff, wrote a letter to Ms. Patti Jensen, representing Ms. Pinter, demanding that the information be furnished. Ms. Jensen did not indicate that she had withdrawn as counsel for Ms. Pinter, and indicated that she would get back to Mr Omdahl after her client had a chance to read the letter.

Mr. Omdahl then filed the contempt proceeding because no answer was forthcoming. It was served on Ms. Jensen, as counsel for the defendant, by mail on June 16, 2004. On June 22, 2004, Ms. Jensen wrote to Mr. Omdahl,

stating that she had not been retained by Ms. Pinter to represent her in this matter.

Mr. Omdahl is relying on service by mail on counsel for the defendant. Ms. Jensen has been the counsel for Ms. Pinter for all of the proceedings in North Dakota and there was only recently a second amended judgment entered in May 2004 and further correspondence between counsel on other matters. There was no indication that Ms. Jensen was suddenly not acting as Ms. Pinter's counsel and there has been no motion or other withdrawal of counsel proceeding before the Court. It appears that Ms. Jensen also has been forwarding copies of the letters and documents to Ms. Pinter and Ms. Pinter has chosen not to respond.

The Court finds that service of the documents upon Ms. Jensen is sufficient under. Rule 5 of the North Dakota Rules of Civil Procedure. See also Thomas v. Thomas, 382 NW2d 639 (ND 1986). The time for appeal from the second amended judgment had not run and Ms. Jensen was representing Ms. Pinter on other matters concerning the minor child under the second amended judgment.

The Court finds that the defendant has not shown good cause why the information has not been furnished, as required by the second amended judgment and she is in contempt of court for her disobedience of a court order. The information concerning address and telephone number for the child must be furnished in fifteen (18) days from the date of service of this Order and the plaintiff is awarded $500 in attorney's fees and costs because of the contempt, said amount to be payable in thirty (30) days from date of service of this Order upon the defendant. Any further noncompliance will result in further sanctions, including $10 per day for each day beyond the fifteen (18) days allowed herein to cure the contemptuous behavior.

**IT IS SO ORDERED.**

Dated this 7th day of September, 2004.

BY THE COURT:

/s/ Bruce E. Bohlman
Bruce E. Bohlman,
District Judge

cc: Thomas Omdahl
Patti Jensen

**IN THE SUPREME COURT**
**STATE OF NORTH DAKOTA**

---

2003 ND 172

---

Robert Stanley Litoff, Plaintiff and Appellant

v.

Helen Pinter, Defendant and Appellee

---

No. 20030074

---

**[ENTERED: December 11, 2003]**

Appeal from the District Court of Grand Forks County, Northeast Central Judicial District, the Honorable Bruce E. Bohlman, Judge.

AFFIRMED IN PART AND REMANDED.

Opinion of the Court by Kapsner, Justice.

Thomas V. Omdahl, Omdahl Law Office, 424 DeMers Avenue, Grand Forks, N.D. 58201-4508, for plaintiff and appellant.

Patti J. Jensen, Galstad, Jensen & McCann, P.A., P.O. Box 386, East Grand Forks, MN 56721-0386, for defendant and appellee.

**Litoff v. Pinter**

**No. 20030074**

**Kapsner, Justice.**

[¶1] Robert Litoff appealed from an order denying his motion to reinstate visitation with his daughter and ordering him to pay attorney fees. We affirm the order denying reinstatement of visitation, but remand for reconsideration of the award of attorney fees and for consideration of Helen Pinter's request for attorney fees for this appeal,

I

[¶2] Robert Litoff and Helen Pinter were married and have one daughter, who was born in 1988. Litoff and Pinter separated in 1989 and their marriage was annulled by a Texas court on August 21, 1990. Litoff and Pinter were named joint managing conservators of the child, with Pinter having primary custody and Litoff having extensive visitation.

[¶3] In May 2001, Pinter received permission from the Texas court to move with the child to North Dakota, where Pinter's new husband had been transferred by the military. During the summer of 2001, the child spent several weeks with Litoff traveling throughout the Midwest, staying in hotels.

[¶4] When the child began school in August 2001, she reported to school authorities that her father had on numerous occasions during their summer vacation masturbated in her presence in their hotel room and had made inappropriate comments to her about her body. School officials reported the incidents to Grand Forks County Social Services, which investigated the allegations

and found that there were risk factors for sexual abuse and that services for protection were required. Litoff appealed and a hearing was held before an administrative law judge ("ALJ"). The ALJ found that incidents had occurred but that they constituted neglect, not sexual abuse, and concluded that services were required. The ALJ found Litoff believed his daughter was asleep and unaware of his masturbation. Litoff did not appeal the decision of the ALJ in the administrative process. Evidence of the ALJ's decision was submitted at the hearing on Litoff s motion to reinstate visitation,

[¶5] In July 2002, the Texas court granted Pinter's petition to modify visitation, and suspended all visitation between Litoff and the child. Litoff was ordered to submit to a psychological exam by a psychologist or psychiatrist approved by the court before any visitation would be allowed. On October 1,2002, the Texas court entered another order suspending Litoff's visitation until he submitted to a psychological exam with a psychiatrist approved by the court. On October 3, 2002, the Texas court transferred jurisdiction to North Dakota.

[¶6] In November 2002, Litoff filed a motion in North Dakota district court to establish a visitation schedule. In his affidavit in support of the motion Litoff referenced a Texas order from April 2002 which allowed visitation, but did not mention the subsequent Texas orders which had suspended all visitation between Litoff and his daughter. At the hearing on Litoff's motion, the court heard evidence that Litoff had on numerous occasions masturbated while his thirteen-year-old daughter was in the same room, and had commented to her that her hips were getting wider and her breasts were getting bigger. There was also evidence that Litoff in writing and in telephone calls pressured his daughter to recant her allegations and threatened to disinherit her if she did not change her story. The psychologist who had been

counseling the child testified that the child had suffered emotional harm from her father's conduct and recommended that no further visitation occur until the child agreed to it.

[¶7] Litoff presented the result of a psychological exam he had undergone, which indicated Litoff did not pose an immediate danger but was unstable and might become unpredictable. The psychologist further stated Litoff suffered from paranoia, mixed personality disorder, and other psychological deficits. The report recommended that Litoff submit to an exam by a psychiatrist.

[¶8] The trial court found that visitation at this time would be harmful to the child's mental, emotional, and physical health. The court ordered that visitation would remain suspended until Litoff completed the services required by Social Services, including a psychiatric report and an assessment for a sexual offender treatment program. Litoff was also ordered to pay $2,000 in attorney fees to Pinter.

II

[¶9] Litoff argues the trial court's determination suspending his visitation rights is clearly erroneous. He specifically challenges the trial court's finding that visitation would be likely to endanger the child's physical or emotional health.

[¶10] Visitation is governed by N.D.C.C. § 14-05-22(2):

> After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely

to endanger the child's physical or emotional health.

[¶11] A trial court's decision on visitation is a finding of fact and will not be reversed on appeal unless it is clearly erroneous. Krank v. Krank, 2003 ND 146, ¶ 16, 669 N.W.2d 105; Lawrence v. Delkamp, 2003 ND 53, ¶ 12, 658 N.W.2d 758. A finding of fact is clearly erroneous only if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after review of the entire evidence, we are left with a definite and firm conviction a mistake has been made. Hogan v. Hogan, 2003 ND 105, ¶ 6, 665 N.W.2d 672.

[¶12] Litoff argues that visitation between a child and the noncustodial parent is presumed to be in the best interest of the child. See, e.g., Montgomery v. Montgomery, 2003 ND 135, ¶ 22, 667 N.W.2d 611. Our statutes and caselaw, however, clearly recognize that visitation with a noncustodial parent may be curtailed or eliminated entirely if it is likely to endanger the child's physical or emotional health. See N.D.C.C. § 14-05-22(2); Negaard v. Negaard, 2002 ND 70, ¶ 13, 642 N.W.2d 916; McDowell v. McDowell, 2001 ND 176, ¶ 28, 635 N.W.2d 139.

[¶13] The trial court specifically found that visitation with Litoff would be harmful to the child's physical and emotional health. The record contains ample evidence to support that finding. There was evidence that Litoff had on numerous occasions masturbated in bed while his thirteen-year-old daughter was in the same room. Litoff made sexually inappropriate comments to his daughter about her body. There was evidence that Litoff pressured his daughter to recant her allegations, and threatened to refuse to pay for her college education and disinherit her if she did not change her story. The child's psychologist testified in detail about the emotional harm suffered by the child resulting

from Litoff's conduct, and recommended no further visitation until the child agreed to it.

[¶14] Litoff alleges the trial court improperly placed the question of visitation into the hands of the child. See Montgomery v. Montgomery, 2003 ND 135, ¶ 22, 667 N.W.2d 611; Sevland v. Sevland, 2002 ND 110, ¶ 10, 646 N.W.2d 689. The trial court held that visitation would be "considered as a viable alternative" only after Litoff completed all of the services required by Social Services to the satisfaction of the court. The court further indicated it would then consider only supervised visitation, "and only to the extent that [the child] wants to have contact with her father." The language of the court's order clearly contemplates a further hearing before a resumption of visitation will be considered. Under these circumstances, we find it unnecessary to address this issue on this appeal.

[¶15] We conclude that the trial court's findings of fact on visitation are not clearly erroneous.

III

[¶16] Litoff argues the trial court abused its discretion in awarding attorney fees to Pinter.

[¶17] The court in its order stated Pinter had "suffered considerable expense in this proceeding, and the court will award $2,000 in attorneys fees" to Pinter. The court gave no further explanation of the basis for the award. On appeal, Litoff argues the award of attorney fees was inappropriate because his motion was not frivolous under N.D.C.C. § 28-26-01(2). Pinter contends the award of attorney fees may be upheld under that statute because Litoff's motion was frivolous, or under N.D.C.C. § 14-05-23, which authorizes the trial court to award attorney fees at any time a divorce action is pending.

[¶18] We are unable to discern from this record the basis for the trial court's award of attorney fees. If the court was acting under N.D.C.C. § 28-26-01(2), it appears the award was inappropriate. That statute allows the court to award attorney fees if a claim for relief is frivolous, but only if "the prevailing party has in responsive pleading alleged the frivolous nature of the claim." Pinter has not drawn our attention to, and we have not found, any responsive pleading in which Pinter alleged Litoff's motion was frivolous.

[¶19] If the court was acting under N.D.C.C. § 14-05-23, it is not apparent from this record that the court considered the appropriate factors in awarding attorney fees. In deciding whether to award attorney fees in a divorce action under N.D.C.C. § 14-05-23, "the court must balance the parties' needs and ability to pay, and should consider the property owned by each, their relative incomes, whether property is liquid or fixed assets, and whether the action of either party unreasonably increased the time spent on the case." McDowell v. McDowell, 2001 ND 176, ¶ 36, 635 N.W.2d 139. The trial court did not address any of these factors when it ordered payment of attorney fees.

[¶20] Because we are unable to discern the basis for the trial court's award of attorney fees, we remand for reconsideration of the award of attorney fees in light of this opinion.

IV

[¶21] Pinter has requested an award of attorney fees for this appeal under N.D.C.C. § 14-05-23, and requests that we remand for the trial court to make an initial determination of attorney fees. We have often expressed our preference to have the trial court initially address the issue of attorney fees for an appeal because the trial court is generally in a

better position to weigh the relevant factors. See, e.g., Berg v. Berg, 2002 ND 69, ¶ 20, 642 N.W.2d 899. Accordingly, we direct the trial court to consider on remand Pinter's request for attorney fees for this appeal.

V

[¶22] We affirm the order denying Litoff's motion to reinstate visitation, but remand for reconsideration of the award of attorney fees and for consideration of Pinter's request for attorney fees for this appeal.

[¶23]

Dale Sandstrom

Gerald W. VandeWalle, C.J.

**IN THE DISTRICT COURT,**
**GRAND FORKS COUNTY, NORTH DAKOTA**

| | | |
|---|---|---|
| Robert Stanley Litoff, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | Civil No. 02-C-1352 |
| | ) | MEMORANDUM |
| Helen Pinter, | ) | DECISION & ORDER |
| | ) | |
| Defendant. | ) | |

**[ENTERED: February 21, 2003]**

This action arises out of a transfer of jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, NDCC Ch. 14-14.1. The parties marriage was annulled in the State of Texas and a decree entered there on August 21, 1990. The parties had one child, Dorothy, born of the marriage. She is presently 14 years of age, having been born on July 30, 1988. The defendant was awarded physical custody of Dorothy, subject to certain visitation rights of the plaintiff.

The parties have engaged in a long series of court actions arising out of the custodial and visitation provisions of the Texas decree. The defendant has remarried and now lives with her husband and family, including Dorothy, at Grand Forks AFB, ND. The plaintiff continues to reside in Texas.

On October 1, 2002, the Texas court issued its order prohibiting any further visitation between Dorothy and the plaintiff until the plaintiff submitted to a psychological evaluation with a psychiatrist approved by the court. The order was entered as a result of proceedings in the Texas court arising out of the summer visitation that the plaintiff

had with Dorothy in the summer of 2001. The visitation occurred in various states and involved charges by Dorothy that the plaintiff masturbated in the same room where she was and that she was frightened by this experience, fearing that she might be raped. The plaintiff also made comments concerning her breast and hip size, further traumatizing Dorothy. Upon her return that summer, Dorothy told the school counselor of her experiences, and a report was filed on August 31, 2001 with Grand Forks County Social Services concerning the incident.

As a result of the investigation by Grand Forks Social Services, Dorothy was found to be at risk for sexual abuse and services were required, including: counseling for Dorothy, a psychological exam for Robert, an assessment for Robert to determine if he should participate in a sexual offender's treatment program, family focused services for the family, and no unsupervised visits between Robert and Dorothy until the required services had been completed.

Robert appealed the findings and recommendation but the services required were affirmed on appeal by the administrative law judge, and only the finding of sexual abuse was changed to "neglect". The administrative law judge found Dorothy's statements to be truthful. Robert did not appeal the decision.

Robert did have a psychological examination done in Texas by Dr. Trevino, a licensed psychologist. The examination was not done by a psychiatrist, as required by the October 2, 2002 Texas order. Nevertheless, Dr. Trevino did recommend that Robert have an examination done by a psychiatrist to determine if psychotropic drugs would help him. Dr. Trevino did find that while there was no immediate danger posed by Robert, he was not stable and if Dorothy became assertive or resistant, his behavior would be unpredictable. Dr. Trevino found that Robert suffered

from paranoia, mixed personality disorder and other psychological deficits.

Essentially, Robert refuses to avail himself of the services that were required and he was not complimentary of the science of psychiatry as a means of obtaining help. He did not see himself as needing help and it was apparent that he suffered from a lack of insight. He is poorly organized, as indicated by the photos of his home in Texas (he concurred that it still looks that way), and he saw nothing wrong with having pornography spread around the house where it was easily accessible by anyone.

Robert also threatened Dorothy with disinheritance if she did not change her story of the events that occurred in the summer of 2001. This reprehensible conduct only further fortifies this court's opinion that Robert does need to avail himself of psychiatric assistance, as well as the other services required by Grand Forks County Social Services.

The court also interviewed Dorothy in chambers, with counsel present. It was apparent that Dorothy wanted no contact with her father at this time and the court finds that such contact would be harmful to her mental and emotional health, as well as her physical well being. Her feelings are real and not imagined. She was an articulate young lady who had suffered a series of traumatic episodes at the hand of her father and she should not have to endure such contacts in the future until it is clear that Robert has recovered sufficiently from his illnesses to pose no threat to Dorothy, and Dorothy has sufficiently recovered from the traumatic experiences and wishes to have contact again with her father.

Dr. Simun, Dorothy's counselor, further supported a suspension of visitation by Robert at this time and recommended that Dorothy be allowed to have a choice in

the matter. Dr. Simun noted that even the Wednesday night telephone calls from Robert to Dorothy were too much for Dorothy to handle and Dorothy dreaded Wednesday evenings because of the scheduled calls. Dorothy refuses to talk with Robert.

Dr. Simun testified that Dorothy suffered from depression and that she suffered a setback at Christmas time in 2002. Her father was putting pressure on her to visit and she had received a Christmas card (Exhibit 2) that made her feel rejected. Dr. Simun has been working intensively with Dorothy and there is a therapeutic relationship between them which does help Dorothy in her recovery process. Dr. Simun recommended that Dorothy should have the ability to choose whether she wants contact with her father at this time.

From all of the testimony, it is clear to the court that visitation between Dorothy and her father should not be forced and it would be harmful to Dorothy's mental, emotional and physical health if she is forced to have contact with her father. See NDCC § 14-05-22(2)(4). Robert must complete all of the required services to the satisfaction of this court before visitation is considered as a viable alternative, and then only supervised, and only to the extent that Dorothy wants to have contact with her father. The court considers the conduct of the plaintiff toward Dorothy as contrary to her health and safety and as sexually abusive.

The defendant has suffered considerable expense in this proceeding, and the court will award $2,000 in attorneys fees to the defendant and judgment may be rendered against the plaintiff accordingly. The Texas judgment shall also be amended to include the provisions of this paragraph and the paragraph preceding. The plaintiff's motion to establish a visitation schedule is denied.

**IT IS SO ORDERED.** Counsel for defendant shall draft the amended judgment form for the court to review before entry by the clerk of court.

Dated this 20th day of February, 2003.

**BY THE COURT:**

/s/ Bruce E. Bohlman
Bruce E. Bohlman,
District Judge

Copies to: Tom Omdahl
Patti Jensen

**State of North Dakota**
**Grand Forks County District Court**

| | | |
|---|---|---|
| Robert S. Litoff, | ) | |
| Plaintiff, | ) | |
| v. | ) | LAW NO. 02-C-01352 |
| Helen Pinter, | ) | |
| Defendant. | ) | |

**Notice of Appeal**

COMES NOW Plaintiff Robert Litoff, through his undersigned attorneys, and notices this Court of his intent to appeal to the North Dakota Supreme Court Judge Bruce Bohlman's Order of October 21, 2004 denying Plaintiffs Motion to Reinstitute Unsupervised Visitation and Motion for Default Judgment.

Dated this 10 day of November, 2004.

Respectfully submitted,

ROBERT S. LITOFF
By Counsel

Bruce Fein
Bruce Fein & Associates
910 17th Street, N.W.,
Suite 800
Washington, D.C. 20006
(202) 775-1787
Counsel for Plaintiff

By: /s/
Bruce Fein
Counsel for Plaintiff

Thomas V. Omdahl
Omdahl Law Office
424 DeMers Avenue
Grand Forks, ND 58201
(701) 772-8526
Counsel for Plaintiff

By: /s/
Thomas Omdahl
ND License #04971
Local Counsel for Plaintiff

**State of North Dakota**
**Grand Forks County District Court**

| | | |
|---|---|---|
| Robert S. Litoff, | ) | |
| Plaintiff, | ) | |
| v. | ) | LAW NO. 02-C-01352 |
| Helen Pinter, | ) | |
| Defendant. | ) | |

**MOTION FOR DEFAULT JUDGMENT**

COMES NOW Plaintiff Robert Litoff, through his undersigned attorneys, and moves this Court for default judgment against Defendant Helen Pinter.

In support of the Motion, Plaintiff states as follows:

1. Plaintiff filed his Motion to Reinstitute Unsupervised Visitation on August 23, 2004.

2. By Rule 3.2(a) of the North Dakota Rules of Civil Procedure, Defendant had 10 days to file a response to Plaintiffs motion. Plaintiff waited 30 days for a response from Defendant.

3. Defendant's counsel, Patti Jensen, informed Plaintiff on September 7, 2004 following her receipt of Plaintiff's motion that she was no longer retained by Defendant in this case.

4. Plaintiff had served attorney Jensen with his Motion since she had never informed him of

either her withdrawal from the case or of Defendant's new address in Germany.

5. Defendant's counsel waited until September 16, 2004 to file a motion removing herself as the counsel of record in this case. In her motion, attorney Jensen includes a letter from Defendant ending Jensen's representation of Defendant dated July 12, 2004. The Court has not acted on the motion to withdraw filed by attorney Jensen. She remains counsel of record for Defendant.

6. When Plaintiff learned of Defendant's address in Germany on September 20, 2004, Plaintiff promptly sent his Motion to Reinstitute Unsupervised Visitation by registered mail. Delivery was made and signed for by Defendant's husband, Gregory Pinter, on September 29, 2004.

WHEREFORE Plaintiff's Motion for Default Judgment shall be granted for the reasons above.

Respectfully submitted,

ROBERT S. LITOFF
By Counsel

Bruce Fein
Bruce Fein & Associates
910 17th Street, N.W.,
Suite 800
Washington, D.C. 20006
(202) 775-1787
Counsel for Plaintiff

By: /s/
Bruce Fein
Counsel for Plaintiff

Thomas V. Omdahl
Omdahl Law Office
424 DeMers Avenue
Grand Forks, ND 58201
(701)772-8526
Counsel for Plaintiff

By: /s/
Thomas Omdahl
ND License #04971
Local Counsel for Plaintiff

**State of North Dakota**
**Grand Forks County District Court**

| | | |
|---|---|---|
| Robert S. Litoff, | ) | |
| Plaintiff, | ) | |
| v. | ) | LAW NO. 02-C-01352 |
| Helen Pinter, | ) | |
| Defendant. | ) | |

**ORDER**

HAVING CONSIDERED all motions and arguments,

IT IS ORDERED that Plaintiffs Motion for Default Judgment is granted.

IT IS FURTHER ORDERED that the relief requested by Plaintiff in his Motion to Reinstitute Unsupervised Visitation be granted. SO ORDERED.

Judge, Grand Forks County District Court

Texas Department of Human Services
Child Protective Services
P.O. BOX 23990
San Antonio, Texas 78223-0990
512/337-3323

June 1, 1990

Ms. Helen Litoff
7771 Joe Newton #2001
San Antonio, Texas 78251

Dear Ms. Litoff:

On 05/03/09, Child Protective Services became involved with your family regarding Dorothy Litoff. After the second injury that occurred to Dorothy on 05/23/90, the agency has decided to make a written agreement between Texas Department of Human Services/Child Protective Services and yourself. We have discussed the seriousness of the injuries which have occurred and the need to the protection and safety of Dorothy. The agreement includes the following:

1) Under no circumstances will you be allowed to be alone with Dorothy Litoff

2) Azucion Delgado will reside with Mrs. Litoff until our agency has reached a finalized decision regarding the case.

3) Should there be any changes Mrs. Litoff is to contact our office immediately.

The main purpose of this agreement is for the safety and protection of Dorothy. If any questions arise, please feel free to contact me at 337-3479.

/s/_____
Teri Sosa
Child Protective Services Specialist

/s/_____
Helen Litoff
Client

/s/_____
Azucion Delgado
Witness

Texas Department of Human Services
Child Protective Services
P.O. BOX 23990
San Antonio, Texas 78223-0990
512/337-3323

June 8, 1990

Ms. Helen Litoff & Family
7771 Joe Newton #2001
San Antonio, Texas 78251

Dear Ms. Litoff & Family:

During my recent assessment of your family situation, I found that there is reason to believe that you are responsible for the child maltreatment of Dorothy Litoff.

As a result of the information which I gathered, we plan to offer services to your family to remedy the problems that resulted in harm or risk to your child(ren). An in-home caseworker will be contacting you within the next two weeks to begin planning for these services.

You have a right to request an administrative review within 15 calendar days after you receive this letter. Before requesting a review, you need to discuss your concerns with me and with my supervisor.

I appreciate your attention to this matter. Please contact me at my office if you want to discuss this letter.

Sincerely,

Teri Sosa
Child Protective Services Specialist I

TS/lm

cc: Leonard Centobie, Child Protective Services Supervisor, 091-38
file copy

## REQUEST FOR APPEAL OF THE CA/N ASSESSMENT DECISION

This process is available to appeal the child abuse and neglect assessment decision.

1. Name of Person Requesting Appeal: Address/Telephone:

   Robert Litoff
   7026 Forest Crest North
   San Antonio, Texas 78240-3314
   Telephone Number: (210) 647-7012

2. Name and Address of Child(ren) Named in Report:

   Dorothy Elaine Litoff
   6108 Unit E Sun Flake Circle
   Grand Forks Air Force Base, North Dakota 58204

3. In Which County Did Assessment Take Place?

   Grand Forks

4. Provide concise statement of why you disagree with the assessment decision. A statement of the relief sought must be included.

   I have never engaged in any inappropriate sexual conduct in front of my daughter nor have I used sexual slang in conversations with my daughter. I am a good father who would never do anything which would hurt my daughter. My daughter's mother has been under the supervision of Texas Child Protective Services for child abuse. My daughter's mother has made at least 3 complaints against me to the Texas Child Protective Services, but they have never made a finding against me.

Judge Carol Haberman, not knowing North Dakota procedure, instructed me to end a large packet of information to Tammy Knudson for her to read and reconsider her decision. I request that you instruct Ms. Knudson to send you the packet of information for your consideration. Enclosed is a copy of the cover letter which I sent with the information packet. I have not yet received the North Dakota file on the case. I want to be able to supplement my case once I receive that file. I want to be able to continue my visitation without any restriction. I will not travel to North Dakota just to spend a couple of hours of supervised visitation. Fathers are important to children. Please do not take me out of my daughter's life.

Signature: Date

/s/ Robert Litoff November 16, 2001

Appeal form must be filed with Appeals supervisor, Department of Human Services, 600 E Boulevard, Bismarck, ND 58505.

Request for appeal may be filed no sooner than the date of a case decision and no later than thirty days from the date of notification of the case decision.

**State of North Dakota**
**Grand Forks County District Court**

| | | |
|---|---|---|
| Robert S. Litoff, | ) | |
| Plaintiff, | ) | |
| v. | ) | LAW NO. 02-C-01352 |
| Helen Pinter, | ) | |
| Defendant. | ) | |

**MOTION TO REINSTITUTE UNSUPERVISED VISITATION RIGHTS AND EVIDENTIARY HEARING**

COMES NOW Plaintiff Robert Litoff, through his undersigned attorneys, and moves this Court to reinstitute unsupervised visitation rights to his daughter Dorothy Litoff, a minor child, aged 16, to provide love and parental guidance. Plaintiff also requests an evidentiary hearing in conjunction with his motion

In support of the Motion, Plaintiff states as follows:

**Jurisdiction**

1. Plaintiffs Motion is proper under NDCC § 14-09-28 and NDCC § 14-09-6.6. This Court entered its Second Amended Judgment, abolishing Plaintiffs visitation rights, on May 21. 2004. Ordinarily, NDCC § 14-09-6.6 would prevent Plaintiff from seeking modification of the custody order within two years. However, if there is a "persistent and willful denial or interference with visitation", a motion for modification shall be heard earlier than the two year

limit. See NDCC § 14-09-6.6(3)(a). Even before the entry of the Second Amended Judgment, Defendant Pinter had moved by stealth on or about February 2004 to Weisbaden, Germany with her third husband and Dorothy. Defendant Pinter flouted her obligations to apprise Plaintiff of the move under NDCC § 14-09-28.1 (e), and (f); she persists in flouting these obligations to this very day. (See Exhibits 1-6) At present, Dorothy's new address and telephone number in Germany have been concealed from Plaintiff in violation of NDCC § 14-09-28 (e), and this Court's order dated May 21, 2004. Accordingly, Defendant has willfully disregarded the custody order and interfered with Plaintiffs visitation rights as provided under NDCC § 14-09-28. This Motion is thus proper under NDCC § 14-09-6.6.3 (a).

**Legal Standards**

2. Visitation by a non-custodial parent with his child is informed by NDCC § 14-05-22, and NDCC § 14-09-28. The court shall grant such rights of visitation as will enable the child and the non-custodial parent to maintain a parent-child relationship that will benefit to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health. NDCC § 14-05-22 (2)

3. Visitation between a child and the non-custodial parent is presumed to be in the best interests of the child. See Montgomery v. Montgomery, 667 N.W.2d 611 (ND 2003), K.L.G. v. S.L.N., 622 N.W.2d 232 (ND 2001), Reinecke v. Griffeth, 533 N.W.2d 695 (ND 1995).

4. Non-custodial visitation can only be terminated by a preponderance of the evidence, not probable cause, that visitation would threaten the physical or mental health of the child. See Healy v. Healy, 397 N.W 2d 71 (ND 1986).

**Importance of Non-Custodial Visitation to the Child**

5. Plaintiffs influence on Dorothy is beneficial and pivotal to her maturation as a successful and productive member of society and to her own happiness. An article in the Ohio State Law Journal found that "[a] substantial body of research supports the conclusion that continued contact with both parents is beneficial to children... The tendency of divorced fathers to withdraw may have serious effects on children... As Clingempeel and Reppucci observed, the child whose father remains involved may have 'a larger array of positive characteristics to model and a greater variety of cognitive and social stimulation.'" 45 Ohio St. L.J. 455 at 488-490 (1984). Dr. Richard A. Warshak echoed that conclusion: "Children generally do better after divorce when both parents continue to participate in child-rearing." See Divorce Poison, Warshak, (2001), p.2. North Dakota courts have endorsed this belief by using joint custody as the starting point to determine how custody should be divided. But in the event of sole custody, the non-custodial parent has a right to visitation that is presumed to be in the child's best interest. K.L.G. v. S.L.N., supra. Plaintiff has shown a persistent desire to involve himself in Dorothy's life and upbringing, especially her educational progress. It speaks volumes that Dorothy's academic performance has plunged since Plaintiffs visitation rights ended. (See Exhibits 7-12)

6. Plaintiff provides an intellectually and culturally enriching presence for his daughter. In Texas, his tutelage placed Dorothy in accelerated educational programs. During the 2001 summer vacation, Plaintiff and Dorothy visited ten state capitals in the Upper Midwest, as well as large cultural centers like Chicago, Milwaukee, Minneapolis, Cleveland, St. Louis, and Kansas City. Father and daughter visited several zoos, botanical gardens, and various other museums and historical locations, such as Greenfield Village in Michigan, U.S. Grant's home in St. Louis, Missouri, Custer's home and a recreation of a Mandan Indian village in Ft. Lincoln, North Dakota, as well as Abraham Lincoln's home, law office and tomb in Springfield, Illinois. Plaintiff broadens Dorothy's cultural and intellectual horizons in parallel ways, by encouraging books, magazines, newspapers, drama, a familiarity with current events, and knowledge of her Russian, Polish, Jewish and Filipino ancestry, including culture, history and religion.

7. Plaintiffs contribution to Dorothy's psychological maturation and segue from adolescence to adulthood counts overwhelmingly in favor of visitation. As elaborated in the studies of Clingempeel and Reppucci, and Emery, Hetherington, and Fisher, the role of the father is critical to the Ml maturation of a child's social and academic faculities. *See* Clingempeel & Reppucci, Joint Custody after Divorce: Major Issues and Goals for Research, 91 Psychological Bulletin 102 (1982); Emery, Hetherington & Fisher, Divorce. Children and Social Policy. Depriving Dorothy of Plaintiff s fatherly influence is adverse to the best interests of the child.

8. Plaintiffs testimony at an evidentiary hearing would decisively establish that re instituting unsupervised visitation with his daughter Dorothy would not endanger either her physical or emotional health. Indeed, unsupervised visitation would promote Dorothy's graduation into adulthood.

**Material Changes in Circumstances**

9. Material changes in circumstances have occurred since this Court's order ending Plaintiffs visitation was entered on May 21, 2004: (l)It has been discovered that Defendant has moved to Germany with Dorothy without informing Plaintiff of his daughter's mailing address or phone number. Even Plaintiffs last birthday card to Dorothy was returned undeliverable; (2) Dorothy is now age 16, and her attitude towards Plaintiff may have changed; and (3) Defendant's move to Germany has substantially compounded the difficulty of any permitted written letter communication with Dorothy to her detriment.

**Relief Requested**

10. Plaintiff requests that unsupervised visitation be reinstituted consistent with the April 3, 2002 Order on Motion for Clarification and Visitation by Judge John Gabriel of 285th Judicial District, Bexar County, Texas.

11. Plaintiff shall have not more than one weekend per month beginning at 5:30 pm on the day school recesses for the weekend and ending at 7:30 pm on the day before school resumes after the weekend. Plaintiff will have his choice as to which weekend of the month will be the weekend for his visitation. He

will give Defendant 14 days written notice preceding the designated weekend.

12. The Thanksgiving visit shall begin at 5:30 pm on the day school recesses for Thanksgiving and end at 7:30 pm on the Sunday before school resumes.

13. Plaintiff shall have visitation with Dorothy for 42 days between June 1 and August 31, to be exercised in no more than two separate periods of at least seven consecutive days each. Plaintiff will give Defendant 14 days written notice before the dates he specifies his visitation is to begin. If Plaintiff does not give Defendant written notice specifying the beginning of the visitation, the visitation shall be for 42 consecutive days beginning at 5:30 pm on June 15 and ending at 5:30 on July 27.

14. Plaintiff shall have visitation with Dorothy every year beginning at 7:00 am on December 26 and ending in January at 7:00 pm on the day before school resumes.

15. Reasonable courtesy is expected. If Plaintiff does not begin bis visitation with Dorothy until after the exact specified time on the day the visit is to begin or if he begins visitation with Dorothy on the day after the day which the visitation was supposed to begin, it is not grounds for Defendant to refuse to allow the visitation. Plaintiff may give the exact time a visit is to begin by telephonic notice on the day before the beginning of the visit. This is necessary because of the great distances which must be traveled for visitation to occur. So, it may not be possible nor reasonable to expect that exact times specified weeks in advance as the beginning time for a visit can be kept when the visit is to begin.

16. The telephone communication between Plaintiff and Dorothy shall not be intercepted nor eavesdropped nor recorded by Defendant or Gregory Pinter.

WHEREFORE Plaintiff respectfully requests an evidentiary hearing before this Honorable Court, to entertain the testimonies of Plaintiff, his 16 year old daughter Dorothy, and other witnesses desired by the Defendant or this Court, and the reinstitution Plaintiffs unsupervised visitation with his daughter. A memorandum in support of this Motion has been filed.

Respectfully submitted,

ROBERT S. LITOFF
By Counsel

Bruce Fein
Bruce Fein & Associates
910 17th Street, N.W.,
Suite 800
Washington, D.C. 20006
(202) 775-1787
Counsel for Plaintiff

By:/s/Bruce Fein
Bruce Fein
Counsel for Plaintiff

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(701) 772-8526
Counsel for Plaintiff

By:/s/Thomas Omdahl
ND License #04971
Local Counsel for Plaintiff

**STATE OF NORTH DAKOTA**
**DEPARTMENT OF HUMAN SERVICES**

| | | |
|---|---|---|
| APPEAL OF: | ) | |
| | ) | ADMINISTRATIVE LAW |
| Robert Litoff | ) | JUDGE'S RECOMMENDED |
| | ) | FINDINGS AND |
| | ) | RECOMMENDED ORDER |
| | ) | |

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## STATEMENT OF THE CASE AND PROCEEDINGS

This matter is before the North Dakota Department of Human Services upon the appeal of Robert Litoff from the determination of the Grand Forks County Child Protection Team that services were required for the protection of his daughter, Dorothy Litoff, upon a risk of sexual abuse by him, which was adopted by the Regional Supervisor of Child Welfare Programs upon review. (For convenience, the North Dakota Department of Human Services is referred to as "the Department;" Robert Lifoff is sometimes referred to as "Litoff;" the Grand Forks County Child Protection Team is sometimes referred to as "the Team;" and the Regional Supervisor of Child Welfare Programs is referred to as "the regional supervisor.")

The notice of the Team's decision given Litoff by the Grand Forks County Social Service Center informed him that "the Team determined a finding of Services Required and identified Risk Factors of Sexual Abuse of your daughter by you," R., Ex. 6, and advised him as follows:

> Risk factors for sexual abuse were made on the information that you engaged in sexual activity on numerous occasions with your daughter in the same room. Dorothy appeared to be impacted by this emotionally,

> stating that she was scared. There was also concern that you made inappropriate comments to her about her development; specifically stating that her hips were wide for her age and that her boobs have gotten bigger.

*Id.* The services required by the Team included no unsupervised contact between Lifoff and his daughter, individual counseling for his daughter, and a psychological evaluation of Litoff and an assessment for his treatment as a sexual abuse offender.

Litoff responded to the Team's findings and determination by categorically and unequivocally denying that he engaged in any sexual activity in the presence of his daughter, and that any comments he made concerning her physical development were intended and reasonably understood to remark upon the fact that his daughter was "developing as an adult" without any improper innuendo. Specifically, Litoff denied using the word "boobs"—saying that he has never used that word, even in conversation among men.

Pursuant to the request of the Department, I was designated by the Office of Administrative Hearings the administrative law judge to schedule and conduct the hearing in accordance with the rules of the Department, and to recommend findings and an order to the executive director of the Department. A hearing was scheduled to be held March 6, 2002, and notice of hearing and specification of issue was duly served as provided by the rules of the Department and the North Dakota Administrative Agencies Practice Act. The hearing was continued upon Litoff's request with the consent of the Department. The hearing was rescheduled pursuant to the agreement of the parties and held May 22, 2002.

The Department appeared by Andrew Moraghan, Assistant Attorney General, Bismarck. Robert Litoff appeared by Thomas V. Omdahl, Omdahl Law Office, Grand Forks.

As a preliminary matter, Litoff moved to dismiss the administrative proceedings upon the ground and for the reason that the proceedings were preempted by the District Court for the 285th Judicial District in and for the County of Bexar, Texas. By an order upon a motion for "clarification and visitation" issued April 30, 2002, R., Ex. 1, the Texas district court provided for Litoff's unsupervised visitation of his daughter. While the order does not reference these administrative proceedings, the court was informed generally of these proceedings and specifically informed of the determination that there be no unsupervised contact between Litoff and his daughter, *i.e.*, no unsupervised visitation *(see* R., Ex. 2, pp. 12, *et seq.)*. Litoff argues that the court's finding that it "has jurisdiction of this case and of all parties and that no other court has continuing, exclusive jurisdiction of this case" and its provision for Litoff's unsupervised visitation of his daughter effectively preempts these administrative proceedings, but offers no authority in support of his argument. My general understanding of executive branch board and agency administrative proceedings is that they are an exercise of the government's police power separate and distinct from judicial branch court orders. *Cf. Williams* v. *North Dakota State Highway Commissioner*, 417 N.W.2d 359 (N.D. 1987). The services required by the Department upon the assessment of the alleged abuse and neglect of a child are obtained from and enforced by the juvenile court. The questions of jurisdiction, preemption or comity, as the case may be, may arise then, but not, I think, now for these administrative proceedings. It is my understanding that the Department may, if it thinks necessary, proceed with its administrative proceedings for

the protection of a child or children under N.D.C.C. ch. 50-25.1 regardless of the provisions of the orders of a court for the custody and visitation of the child or children. Accordingly, Litoff s motion to dismiss these administrative proceedings is denied.

Having considered the evidence of the testimony of the witnesses and the documents offered on behalf of the Department and received, together with the argument of counsel for the parties, I conclude that the determination of the Team and the regional supervisor is correct in accordance with law; but that it must be modified in accordance with an assessment of risk factors for neglect and to provide services appropriate for that assessment. Upon the discussion following, I recommend the following findings of fact, conclusions of law and order to the executive director of the Department.

## DISCUSSION OF THE EVIDENCE AND LAW

Hearings of appeals of administrative determinations concerning child abuse and neglect in general, and this case in particular, merit a discussion of the evidence and the law preliminary to the statements of the findings based on the evidence and law.

Typically, an allegation of abuse and neglect of a child involving sexual activity is founded upon the statements and conduct of the child. In this case the allegations are based almost entirely upon the statements of the child. Sometimes the child's statements are corroborated in one way or another by another child or other children, and sometimes the sexual activity is evidenced by some physical trauma. But often, as in this case, there is no evidence of the alleged abuse or neglect other than the statements of the child. Generally, for obvious reasons, the child is not a witness for the administrative hearing of an

appeal from a determination that services are required for the protection of an abused and neglected child, and in this case the child did not testify. As it was in this case, evidence of the child's statements is typically offered by the testimony of the child protection social worker who has interviewed the child for the assessment of the report of suspected abuse and neglect. Although the evidence is obviously hearsay, it is admissible in accordance with the Department's rule, N.D. Admin. Code § 75-03-18-11.

When, as in this case, the child's statements evidencing the alleged abuse and neglect are categorically denied by the person suspected of abusing and neglecting the child, the question of whether the conduct alleged to have occurred did in fact occur becomes a matter of evaluating the credibility of the child who has made the statements which are the bases of the alleged abusive conduct vis à vis the credibility of the person who denies acting as alleged. The circumstance commonly occurs in the legal process, except that for an administrative hearing to review a determination of child abuse and neglect when the child does not testify the child's credibility must be evaluated by proxy upon the evidence of the testimony of the child protection social worker (or other person, such as a law enforcement officer) who interviewed the child.

This case appears to be an extreme example of the circumstance. There is no evidence of the alleged conduct except the statements of the child. The conduct alleged by the child is categorically denied by the person alleged to have committed the acts, her father. (Although it is noted that in addition to alleged conduct, there are also certain statements alleged to have been made by the child's father which were also determined to be bases for a finding of risk of sexual abuse of the child. Those statements were not categorically denied by the father, but were denied to have been made as alleged. Regardless, the Department's witness

acknowledges that a determination that services were required for the protection of the child would not have been made upon just the basis of the statements, and the essential question for the review of the Team's determination remains whether it is more likely than not that the conduct alleged by the child occurred.)

In this case the child's credibility can be evaluated only by evaluating the education, experience, and judgment of the child protection social worker who interviewed the child, and, insofar as the evidence allows, by inferences based upon the conduct of the child and circumstances attending the child's statements. (But, of course, even the evidence of the conduct of the child and the circumstances attending the child's statements is typically, and in this case was, hearsay evidence offered by the child protection social worker.) There is in this case, as is typical, no video recording of the child's interview, not even an audio recording. The investigation of allegations of sexual abuse, even when based only upon the statements of the child, does not typically include a psychological consultation for the consideration of either the truth of the statements made or the trauma resulting to the child, and none was done in this case. Doubtless because of the need to expedite the assessment, there is little background investigation of the family and social history of the child and the person alleged to have abused or neglected the child.

Although the findings and conclusions of the child protection social worker are also considered by the Team and subject to a review by the regional supervisor, there is little in the process which suggests a critical analysis and review of the facts reported or the conclusions based upon those facts. Both the Team and the regional supervisor (who frequently is, and in this case was, chair of the Team), have only the information which the child protection social worker provides with her or his analysis of the risks of

abuse and neglect. The child protection social worker comes to the meeting of the Team with her or his conclusions and opinion for any services required. That is not to imply that the Team and the regional supervisor only rubber-stamp the conclusions of the social worker. But, obviously, in the circumstances the child protection social worker is an advocate for her or his findings and conclusions, and must be expected to make her or his presentation accordingly.

In the end the question is not whether the child's statements are credible, but whether the conclusions of the child protection social worker who interviewed the child and obtained the other information which was submitted to the Team for its consideration are credible. The evaluation is difficult at best considering that for both the accused and the administrative law judge the child protection social worker is the source of all information, and, having made the conclusions which are reviewed upon the hearing of the appeal, understandably presents the information to support those conclusions. Although the regional supervisor typically is, and in this case was, also a witness at the hearing, she or he has no more information than the child protection social worker has obtained and presented. Unless something in the process of the assessment by the Team and review by the regional supervisor or in the hearing of an appeal prompts the child protection social worker to reconsider her or his conclusions, it is unlikely that any bases to question those conclusions will be found. When all is said and done, the assessment of the risks of abuse and neglect of a child and the determination of whether services are required for the protection of the child are based upon the conclusions of the child protection social worker supported by the information that she or he has obtained and presented. When there is no more than the statements of the child against the denial of the accused, it is disquieting that the process of fact-finding must be by proxy. That is not to say that it is wrong or even inadequate

for the administrative process for which it is employed. It is to recognize the limitations of the process when, as here, the assessment of risk of child abuse and neglect and a determination of services required must be made principally, if not entirely, upon the statements of the child which are denied by the person who is accused of child abuse and neglect, and the damning evidence of the statements, demeanor and conduct of the child can only be viewed through the eyes of the child protection social worker who has investigated the allegations, and evaluated in terms of the evaluation made by that same person. The following findings of fact are made, and must be considered, with these limitations in mind.

## FINDINGS OF FACT

1. Dorothy Litoff is the daughter of Robert Litoff. On August 30, 2001, she was-13 years old. Dorothy's mother and Litoff separated in 1989 and their marriage was annulled in 1990. Since their separation they have been unable to cooperate for Litoff s visitation of Dorothy except pursuant to the orders of the court having jurisdiction of the custody and visitation of the child.

2. On August 31, 2001, Grand Forks County Social Services (referred to as the County) received by telephone a report of suspected child abuse and neglect concerning Dorothy. A written report, received by the County on September 4, 2001, was as follows:

> Dorothy came to [redacted] around 1:00 pm Friday. She was crying. She stated she did not want to see her "real" father and that he was coming this week-end. When I asked her to tell me why she stated "He was bad this summer and I don't want to see him." When I pressed for more information, she said it was

> too hard to tell, but she could write it. (See attached note.) This is in her own handwriting.

R., Ex. 3. (N.D.C.C. § 50-25.1-11(4) provides that the identity of persons reporting suspected child abuse and neglect is protected, and exhibits are redacted to conceal information which may identify a reporter.) The attached note follows:

> almost every night when he thought I was sleeping he masterbaited while looking at me
>
> he kept on telling me how wide my hips have gotten and how big my boobs are
>
> Dorothy Litoff [her signature] August 31, 2001

R., Ex. 4.

3. Dorothy was interviewed for approximately one hour on September 7, 2001, by Tammy Knudson, a child protection social worker (a specially trained and certified social worker qualified to work with cases of suspected child abuse and neglect) and Renee Waters, representing the Family Advocacy Office of the Grand Forks Air Force Base. (Dorothy's stepfather was then serving in the United States Air Force and stationed at that base. Grand Forks County Social Service Center and the Air Force cooperate for the investigation of reports of suspected child abuse and neglect involving Air Force personnel or their dependents.) The report of that interview provided by Ms. Knudson as part of the Assessment Report is substantially the same as her testimony at the hearing, and, in relevant part, summarizes Dorothy's responses to questions about her father's conduct when they traveled together during his visitation in June and July 2001:

> She stated that when they stayed in motels that they did have separate beds. She stated that during the night he would play with himself. In talking with her about masturbating, and how she knew what he was doing, she stated that she and her friend talked about it; what it sounds like and how people may touch them. She stated that he would have his hands on his penis and his "hands were shaking." She stated that he thought he was sleeping and, one time during this, he looked at her. She stated that she would wake up and see this going on. She stated that when he was done he would get up and to the bathroom. She stated that she never did see his penis, except one time she saw its' outline through the sheet. She stated that this started the last night in Minneapolis, which was about 4-5 days into the trip. She stated that it happened 20-25 times. She was scared, and in the morning would be upset. She stated that she was afraid that he would try to rape her. She stated that he made inappropriate comments to her about her hips being wide for her age and her boobs getting bigger. She stated that a dad is not supposed to make those comments to his daughter.

R., Ex. 5, p. 5.

4. There is no evidence of the specific statements or comments made by Litoff to this daughter which are categorized as "inappropriate comments to her about her hips being wide for her age and her boobs getting bigger," nor is there any evidence of the circumstances in

which the statements were made or the context of the statements in the course of conversation between Litoff and his daughter. While it was reported that Dorothy "stated that a dad is not supposed to make those comments to his daughter," there is no evidence showing, or from which it may be reasonably inferred, that Litoff intended or that Dorothy reasonably understood that the statements had an improper and threatening sexual innuendo so as to cause her to be scared and upset. Dorothy's comment that "a dad is not supposed to make those comments to his daughter" may as well reflect criticism and perhaps anger as fear and emotional distress. And although it was further reported that Dorothy "described that, on occasion, she was uncomfortable when he would reach across her," *id.*, there is no evidence which would relate her being scared and upset or uncomfortable to the alleged inappropriate comments made by Litoff as separate from his conduct.

5. Ms. Knudson testified to describe Dorothy's demeanor during the interview as quiet, sad, and embarrassed. But she also recalls noting that Dorothy made eye contact with her and focused on her questions during the interview, and was not afraid to report what happened. Ms. Knudson's training as a child protection social worker includes techniques for interviewing children, including the use of open-ended questions and otherwise avoiding the suggestion of answers, and she testified that she employed that training to interview Dorothy. Ms. Knudson's training also includes indications that a child has been coached to provide information (for example, using words not appropriate for their age), and Dorothy's responses to the questions she was asked showed no indication that she had been coached to provide any information. Ms. Knudson concluded that Dorothy's statements and her responses to the questions she was asked were truthful.

6. As further evidence that Dorothy was neither coached nor otherwise acting in the interest of her mother to frustrate her father's visitation or for any other purpose her mother may have, Ms. Knutson testified that Dorothy's mother professed to have no knowledge of Dorothy's allegations of her father's conduct during his visitation, and was reluctant to take any action which would restrict LitofFs visitation contrary to the court order providing for his visitation.

7. Kate Kenna, the Regional Supervisor of Child Welfare Programs, testified concerning the assessment made by the Team. She served as chair of the Team for the assessment of the risks of abuse and neglect of Dorothy, whether services were required to protect Dorothy from any risks of abuse and neglect found, and to determine what services were required. Ms. Kenna testified first to explain that, considering the Department's policies, the Team had found risk factors for sexual abuse of Dorothy by Litoff, and had determined, among other things, that Litoff should be required to have a psychological evaluation and an assessment for treatment as a sexual abuse offender, but Dorothy was not an "abused child" who was suffering from or had been subjected to any sex offense within the meaning of N.D.C.C. § 50-25.1-02. Rather, she testified, Dorothy was a "neglected child" within the meaning of N.D.C.C. § 50-25.1-02(8), as a "deprived child" defined by N.D.C.C. ch. 27-20 who was

> not getting what she needed in order to have good moral, solid character development; that she was getting the parental needs—or from her parent, the needs that she had to do well.

R., Tape 1, Side 2, Index 452. Further explaining, Ms. Kenna testified that Dorothy was neglected within the meaning of the statute

> because of her need for a solid moral development, her need for solid parenting, consistency. She was telling the worker that she was afraid, that she was uncomfortable, that it didn't feel safe to her, that she was worried about being raped. So, that's not a good thing for a child, for her moral development, to have those kinds of concerns.

*Id.* at Index 470. Specifically, Ms. Kenna testified, "masturbating in front of a child is not proper parental care and control." *Id.*

8. Robert Litoff testified to categorically and unequivocally denies that he masturbated in the presence of his daughter during his visitation in June and July 2001. "Absolutely not," he said. R., Tape 2, Side 1, Index 210. Litoff testified further to explain that he did comment to his daughter that she was "developing as an adult" and may have said something about her hips becoming wider. R., Tape 2, Side 2, Index 115. But he expressly denied using the word "boobs;" testifying that he has never used the word, even in conversation among men. He testified further to explain that he certainly did not intend to make any sexual innuendo by his comments, but rather intended only to communicate his notice that his daughter was growing up and thought that she would be pleased that he noticed.

9. In considering the truth of Dorothy's statements, there is little purpose to be served by considering whether her statements are literally true. Whether the conduct occurred almost every night or 20 to 25

times, the essential allegation is that the conduct was both repeated and frequent. The response is that the conduct never occurred. The literal allegation is not so extreme that it is obviously fabricated, and otherwise the literal accuracy is not significant. Similarly, whether Litoff actually used the word "boobs" in any statement made to Dorothy or whether the word was Dorothy's slang term to describe her recollection of her impression of some comment which her father made concerning her developing as an adult is not the question. The essential question is whether Litoff made comments to Dorothy which she reasonably understood to have some improper sexual innuendo and which troubled and frightened her.

10. There is a long, complicated history of hostility between Litoff and Dorothy's mother. Litoff suspects, not unreasonably upon the evidence of record, and speculates that Dorothy is motivated by her mother's interests to frustrate his visitation and his efforts otherwise to maintain his role as Dorothy's father. He also speculates that Dorothy is both educated and influenced by what she sees on television and by her peers, and that she has become street-smart by her experience with her and mother's previous involvement with the Texas Department of Human Services concerning allegations of her mother's maltreatment of her and allegations of his maltreatment or abuse of her.

There is some circumstantial evidence to support Litoff s suspicion and speculations. The hostility between Litoff and Dorothy's mother and her mother's repeated failure to abide the orders of the court for Litoff s visitation of Dorothy is evident from the various papers of the Texas district court which have been received as exhibits. It is at least curious that Dorothy's complaints about her father's conduct come more than a year after the time of the alleged conduct and on the eve of his visitation. There is an

extensive history of investigations of alleged abuse and neglect of Dorothy on separate occasions by both her mother and father, albeit with little evidence of Dorothy's involvement. But there is no evidence how, specifically, Dorothy might have been influenced by anything she has seen on television or by peers to make the allegations she did about her father's conduct.

11. Considering Litoff's suspicions and speculation, there is insufficient evidence to support any inference which would provide a reason for Dorothy's allegations of her father's conduct other than her genuine complaint and concern.

While there is circumstantial evidence that Dorothy's mother can reasonably be expected to act to frustrate Litoff s visitation of his daughter and, perhaps more significantly, damage his standing as Dorothy's father, the inference is precluded by the evidence that Dorothy's mother professed to have no knowledge of Dorothy's complaint and was reluctant to take any action to limit Litoff's visitation contrary to the provisions of the order of the Texas court. (I recognize for my consideration the possibility that Dorothy's mother may be so clever as to anticipate that a show of ignorance and reluctance to act upon the information would be considered as evidence of the truth of Dorothy's allegations, but such duplicity is not evidenced in any of the various legal proceedings had concerning Dorothy's custody and LitofFs visitation, and was not argued by Litoff or his counsel. A conclusion that there was such a clever and complicated conspiracy of Dorothy and her mother to frustrate Litoff's visitation and otherwise limit his rights and privileges as Dorothy's father requires more than a theory based upon a possibility.)

While it is at least curious that Dorothy does not complain about her father's conduct for more than a year, and not until days before his next visitation, Ms. Knudson testified that a child's reluctance to talk about a parent's offensive and seemingly wrongful conduct is not unusual, and it is not unexpected that she would not voice her complaint and concern until faced with the likelihood of another occurrence. While Ms. Knudson was not offered as an expert witness, she has both special training and significant experience concerning the behavior of abused and neglected children which warrants the careful consideration of her opinions. Her opinions in this regard are not rebutted by any opinion of another equally or more qualified witness or other evidence. In the circumstances, my curiosity is no more than reason for inquiry.

Although there is a history of multiple investigations by the Texas Department of Human Services of alleged abuse and neglect of Dorothy on separate occasions by both her mother and father, and reason therefore to suspect that she may be sufficiently informed of the process to manipulate the system (as Litoff says, to have become "street-smart"), the evidence of record does not support that conclusion for at least two important reasons. First, there is no evidence of Dorothy's intent or purpose to manipulate the system *to* avoid her father's visitation or otherwise impugn his role as a father. Litoff testified that his daughter did not previously protest his visitation. There is no evidence that she has acted in other ways to avoid his visitation. (I have in mind Litoffs testimony that Dorothy's mother and stepfather are "driving forces" for her action, but, as previously discussed, there is, at best, only circumstantial evidence insufficient to support an inference of that fact. The question presented by the argument that Dorothy has manipulated the system for her purposes is whether she herself has any reason and the capability to do that.) Second, reviewing the records of the Texas

Department of Human Services concerning its investigations of allegations of abuse and neglect of Dorothy, there is little evidence of Dorothy's involvement which would support an inference that she is capable of conceiving and executing a plan to make a false report of her father's improper conduct for an ulterior purpose. There is no suggestion in any of the records of the investigations of the Texas Department of Human Services that Dorothy offered any false or doubtful information concerning either her mother or her father. There is no evidence of record that Dorothy has a reputation for attempting to have her way by means of deceiving and manipulating others.

12. It is not insignificant that Litoff has a good reputation. He categorically denies any history of conduct to suggest that he would act in violation of law or contrary to generally accepted moral standards. His denials stand unimpeached. Although there have been previous allegations that he abused his daughter which were investigated by the Texas Department of Human Services, the investigations were closed because the information "doesn't appear to involve abuse, neglect or risk," R., Ex. 11, p. 5, and because the allegations were "too vague or general," R., Ex. 12, p.6. Having in mind that Dorothy's allegations are that her father "masturbated ... when he thought I was sleeping ...," the allegations do not involve conduct in violation of any law or even contrary to generally accepted moral standards. (While Ms. Kenna's testimony may be taken to imply that Litoff s alleged conduct was an example of immoral conduct which Dorothy might either accept or emulate in derogation of her morals, that cannot reasonably be understood to be her opinion.) Rather, if Dorothy's allegations are considered to be true, Litoff believed that his daughter was asleep and unaware of his masturbation, and he therefore neither willfully conducted himself to involve his daughter for his sexual pleasure nor willfully acted to corrupt his daughter's morals. Rather, by

carelessness and neglect of his daughter's interests he has allegedly engaged in conduct which both troubles and frightens her. There is no evidence to even suggest that he acted willfully to risk harm of his daughter in any way. That conclusion is further supported by his reputation. But his reputation does not evidence an absence of carelessness or negligence in the course of otherwise ordinary conduct.

13. Litoff's counsel aggressively interrogated Ms. Knudson, the child protection social worker who investigated the statements reportedly made by Dorothy. Her responses are critically considered for her credibility, having in mind that, as a practical matter, she is proxy for Dorothy and Dorothy's credibility can be determined only upon an evaluation of her credibility. It is at least arguable that Ms. Knudson might have done more to inquire concerning the social and family history of Dorothy, her mother and stepfather, that the history and circumstances of allegations of abuse and neglect made by Dorothy and her mother against Litoff might have been investigated and evaluated for any relevance to Dorothy's statements at issue in this matter, and that the investigation would have benefited by consultation with a psychologist. But accepting the argument that more might have been done, there is no evidence that any further investigation and study would have even suggested a different conclusion by Ms. Knudson, the Team, or the regional supervisor, Ms. Kenna, who makes the final decision upon a review of the Team's determination. Upon each challenge whether facts which would have been disclosed by any further investigation and study would have changed a conclusion made for the assessment and determination, Ms. Knudson and Ms. Kenna each answered "no" and offered cogent reasons why they would not come to a different conclusion. Upon the evidence of record and with careful consideration of the argument of Litoff s counsel, there is no reason to disagree. Whether upon the scope of the investigation of the report of

suspected child abuse and neglect by Ms. Knudson or the assessment of the Team and Ms. Kenna, both considered in the light of me policies and procedures of the Department for an assessment of a report of suspected child abuse and neglect as provided by its Manual, there is no reason to reject the conclusions that Dorothy was truthful in making the statements she initially made concerning her father's conduct and in her responses to the questions asked her by Ms. Knudson and Ms. Waters in the course of her interview by them.

Ms. Knudson is educated and licensed as a social worker, and is specially trained and qualified as a child protection social worker. She has approximately four years' experience as a child protection social worker. She processes ten to twelve reports of suspected child abuse and neglect each month. Her education, training, and experience were not challenged, and her testimony reflected her qualifications and suggested no reason to question her evaluation.

## CONCLUSIONS OF LAW

1. A "neglected child" means a "deprived child as defined in N.D.C.C. ch. 27-20. N.D.C.C. § 50-25.1-02. As relevant to this matter, a "deprived child" means a child who is without proper parental care necessary for the child's mental, or emotional health, or morals, and the child's deprivation is not due primarily to the lack of financial means of the child's parents. N.D.C.C. § 27-20-02(8)(a).

2. There is no requirement of law that conduct resulting in the absence of proper parental care or conduct which constitutes improper parental care be willful. The absence of proper parental care or improper parental care, as the case may be, may be a consequence of neglect to act as

necessary to provide the proper parental care necessary for the child's mental or emotional health or morals.

3. The conclusions of the child protection social worker that Dorothy Litoff was truthful in making the statements she initially made concerning her father's conduct and in her responses to the questions asked her in the course of her subsequent interview concerning her statements, based upon the education, training and experience of the social worker and the findings of her investigation, are supported by the greater weight of the evidence.

4. The evidence of record shows that the investigation of the report of suspected abuse or neglect of Dorothy Litoff by Robert Litoff and the assessment of the findings of the in-vestigation were made in compliance with the procedures of the North Dakota Department of Human Services as provided by its Manual, Service Chapter 640, excepting only that the policies of the Department were erroneously applied for the assessment identifying risk factors of sexual abuse of Dorothy Litoff by her father Robert Li toff.

5. The greater weight of the evidence shows that Robert Litoff negligently exposed his daughter to his masturbation by failing to act reasonably to protect against her observing such conduct, and thereby caused her to be both troubled and frightened by his conduct.

6. In the circumstances of observing her father's masturbation and being troubled and frightened as a result, Dorothy Litoff was without proper parental care necessary for her mental or emotional health, and was thereby a "deprived child" within the meaning of N.D.C.C. § 27-20-02(8)(a) and a "neglected child" within the meaning of N.D.C.C. § 50-25.1-02(8). The deprivation of proper parental

care for Dorothy's mental or emotional health is not, obviously, due primarily to the lack of financial means of her father.

7. There is insufficient evidence *to* establish that Robert Litoff made inappropriate comments to his daughter about her hips being wide for her age and her breasts getting bigger which were willfully made by him or "reasonably understood by his daughter to have any improper sexual innuendo so that his daughter was troubled or frightened and thereby for those reasons without proper parental care for her mental or emotional health or morals within the intent and purposes of N.D.C.C. § 27-20-02(8)(a) and the requirement of N.D.C.C. § 50-25.1-02(8).

8. The determination of the Grand Forks County Child Protection Team and the regional supervisor that services are required for the protection of Dorothy Litoff is correct in accordance with law; but not, however, upon the assessment made, but rather upon an assessment that Robert Litoff negligently exposed his daughter Dorothy Litoff to his masturbation by failing to act reasonably to protect against her observing such conduct, thereby causing her to be both troubled and frightened by his conduct, and therefore Dorothy Litoff was without proper parental care necessary for her mental or emotional health, and was a neglected child within the meaning of N.D.C.C. § 50-25.1-02(8).

9. The determination of the Grand Forks County Child Protection Team and the regional supervisor that services were required for the protection of Dorothy Litoff should be affirmed, but modified in accordance with an assessment of risk factors for neglect and to provide services appropriate for that assessment.

## ORDER

The determination of the Grand Forks County Child Protection Team and the regional supervisor that services are required for the protection of Dorothy Litoff shall be affirmed, but the matter shall be returned to the regional supervisor for further assessment and modification in accordance with an assessment of risk factors for neglect and for a determination of services required in accordance with the assessment. The information maintained for the Child Abuse and Neglect Information Index concerning Robert Litoff shall be modified accordingly.

Dated at Bismarck, North Dakota this 12th day of July, 2002.

/s/ Al Wahl

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501-1882
Telephone: (701) 328-3260

**STATE OF NORTH DAKOTA**
**DEPARTMENT OF HUMAN SERVICES**

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| APPEAL OF: | ) | |
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| Robert Litoff | ) | ORDER |
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The evidence of record has been considered and appraised. The administrative law judge's recommended findings are adopted.

The determination of the Grand Forks County Child Protection Team and the regional supervisor that services are required for the protection of Dorothy Litoff shall be, and hereby is, affirmed; but the matter shall be returned to the regional supervisor for funher assessment and modification in accordance with an assessment of risk factors for neglect and for consideration of services required in accordance with the assessment. The information maintained for the Child Abuse and Neglect Information Index concerning Robert Litoff shall be modified accordingly.

Dated at Bismarck, North Dakota this _____ day of July, 2002.

Carol K. Olson
Executive Director

IN DISTRICT COURT, GRAND FORKS COUNTY,
NORTH DAKOTA

Robert Stanley Litoff,

Plaintiff,

vs

CIVIL NO. 18-02-C1352
APPEAL TRANSCRIPT

Helen Pinter,

Defendant.

BEFORE: Honorable Bruce E. Bohlman
District Judge

Grand Forks County Courthouse
Grand Forks, North Dakota
January 16 and 17, 2003

APPEARANCES:

FOR THE PLAINTIFF:

Thomas V. Omdahl
Attorney at Law
424 DeMers Avenue
Grand Forks, North Dakota 58201

FOR THE DEFENDANT:

Patti J. Jensen
Attorney at Law
P. 0. Box 386
East Grand Forks, MN 56721

**[**5]DR. DINA TREVINO,**

a witness called on behalf of the Plaintiff, having been first duly sworn by the Court, was examined, and testified, as follows:

**DIRECT EXAMINATION BY MR. OMDAHL:**

Q Dr. Trevino, can you hear me?

A Yes, I can.

Q Dr. Trevino, I understand you did perform a psychological evaluation on Mr. Robert Stanley Litoff?

A Yes, I did.

Q I'm going to ask you a couple questions about your background. I understand you're a licensed psychologist?

A Yes, sir.

Q What is your education?

A I received a bachelor's degree in psychology in 1977 from the University of Texas in Austin. My master's degree in 1981 also from the University of Texas in Austin and my Ph.D. in psychology from the University of Texas at Austin in 1987. I did an internship at Southwest Medical School in Dallas, Texas in 1986 and as a psychologist I'm licensed in the State of Texas only.

Q What is your current position at this time?

A I'm in private practice in San Antonio, Texas. I have been here for the last ten years in private practice

[**6]primary involved in doing assessment and therapy with children, adolescents and adults involved in litigation. I do quite a bit of work with custody cases in Texas. I serve as a Guardian ad Litem on occasion in Texas for Bexar County and other counties.

Q How is it Mr. Litoff came to you for an evaluation?

A I'm not quite sure how he got my name, Mr. Omdahl. He called the office and said he needed a psychological evaluation and subsequently brought the court order.

Q You do evaluations for the Court in San Antonio?

A In Bexar County.

Q And Dr. Trevino, do you know a Judge Peeples in San Antonio?

A Yes.

Q Were you aware that he had issued an order that Mr. Litoff have a psychological evaluation?

A That was the order. The order was signed by Judge Peeples.

Q You performed that evaluation; is that correct?

A Yes.

Q When did you do that?

A I did the evaluation and I met with Litoff on 11-14 and 12-30 I had him come in and complete paper and [**7]pencil testing.

Q And you also issued a written psychological evaluation; is that correct?

A On January 10th.

Q I have that in front of me. Do you have that? You have referred to that you performed certain tests on Mr. Lithoff is that correct?

A Yes, sir.

Q And you also received certain data that is listed?

A Yes, sir.

Q Some orders, et cetera?

A Yes, sir.

Q And you understand the purpose of this hearing today it to look at the issue of visitation with Mr. Litoff and his 14-year-old daughter Dorothy?

A Yes, sir.

Q What we're looking at is Mr. Litoff's psychological functioning as it would relate to his ability for visitation with Dorothy.

I would like to have you comment on your opinion from our evaluation on whether Mr. Litoff should have restricted visitation?

MS. JENSEN: I'm sorry. My name is Patti Jensen. I'm the other lawyer in this case; and, Your Honor, [**8]I have an objection. First, to testimony off a record that is not yet marked, offered, and admitted into evidence. And then as to the question Mr. Omdahl just asked, I have an objection. I don't think there is any foundation for this doctor to testify as to opinions regarding visitation when the total involvement that she has had is to evaluate one of the parties involved in litigation,

First, we need to mark the evaluation.

THE COURT: Do you have one to mark?

MR. OMDAHL: I think it has been put in the file. It has been filed with the Court.

Is that an extra copy?

THE COURT: I'll have one marked.

**(Marked for Identification Plaintiff's Exhibit No. 3 by the Court Reporter)**

MR. OMDAHL: I will offer Plaintiff's Exhibit No. 3.

THE COURT: Any objection.

MS. JENSEN: No objection.

THE COURT: Received.

Q (Continuing Mr. Omdahl) Dr. Trevino, I'm going to ask you a little about what you thought the purpose of your psychological evaluation was? This is Mr. Omdahl.

[**9]A Yes, Mr. Omdahl, the purpose of my evaluation was to assess whether this individual suffered from any mental illness that would be of concern.

Q Concern for what?

A Well, concern for visitation with his daughter, supervised or unsupervised.

Q And what was your conclusions?

MS. JENSEN: This is Ms. Jensen. I have an objection. We're on a speaker phone. I'm not so sure you can pick up this up.

I have the same objection. I would ask that I be allowed to ask the doctor some questions with respect to that objection.

THE COURT: All right. Very well. Dr. Trevino, there will be a few questions concerning the last questions asked by Mr. Omdahl. These questions will be asked by Ms. Jensen.

**EXAMINATION BY MS. JENSEN:**

Q Do I take it that you're involved recently in a forensic setting where you're doing evaluations in conjunction with litigation?

A Yes, Ma'am.

Q Have you ever met Mr. Litoff's daughter Dorothy?

A No.

Q Have you ever seen any psychological testing or [**10]any information with respect to Dorothy?

A No.

Q Have you ever met my client, Dorothy's mother, Ma'am, Helen Pinter? Have you ever met her?

A No. I have --

MS. JENSEN: First off,

THE COURT: You'll have to slow down and not speak quite so fast.

THE WITNESS: Yes.

THE COURT: So we can pick up what you're saying here that would help a lot.

Could you start that answer over again?

Q (Continuing Ms. Jensen) Do you remember my question.

A Yes, Ma'am.

Q I was asking whether you ever had any contact or had any information with respect to Dorothy's mother, Helen Pinter?

A Yes, Ma'am. No, I have not.

Q Would it be a fair statement, Ma'am, that the contact you have had with respect to this case is the psychological evaluation you performed on Mr. Litoff which we now have marked and admitted as Exhibit No. 3?

A Yes.

MS. JENSEN: Your Honor, I would object. I [**11]don't think this witness has sufficient information. I don't think it would be appropriate for a psychological professional to be commenting or making recommendation to a court relative to visitation when there had been no evaluation, no review of records, and no contact with other parties.

THE COURT: I think the purpose of the evaluation is clear in my mind that she was retained to do an evaluation to determine if there were any psychological or perhaps even psychiatric disorders which would affect Mr. Litoff's ability to exercise visitation; and, I think, that was the purpose of your examination, is that correct, Dr. Trevino?

THE WITNESS: Yes, Your Honor, but my ability to make opinions or recommendations as the opposing counsel suggested, my purpose for judging people the way I understand the evaluation was certainly that this report would be used to make an assessment about his ability to exercise visitation but I could make no recommendation about that. What I can talk about is this individual's personality functioning whether he has any severe mental illness and what the prognosis is. What the expected behaviors are with this kind of mental illness, if he has one, and then it would be for the court to decide.

THE COURT: Yes, all right. I will overrule [**12]the objection with that understanding and limitation upon the scope of the testimony.

You may proceed, Mr. Omdahl.

MR. OMDAHL; Thank you, Your Honor.

Q (Continuing Mr. Omdahl) Dr. Trevino, is it correct you reviewed an Order for Clarification and Visitation dated March 3, 2002?

A Yes, sir, I did.

Q You also indicated on your report you reviewed a Temporary Order on Motion for Enforcement on Order to Modify Parent-Child Relationship dated July 18, 2002?

A Yes.

Q You also reviewed a transcript of a court hearing on October 15th?

A Yes, sir.

Q You also reviewed an intake report from Child Protective Services, Helen Pinter?

A Yes.

Q And there was another intake you also reviewed?

A Yes, sir.

Q And a letter dated October 15, 2001 from Mike Haley addressed To Whom It May Concern. What was that?

A I believe Mike Haley was an attorney of some sort or consultant, if I recall, who was making an Affidavit, I think, that said that the reason that Mr. Lithoff and the [**13]child Dorothy was that he had suggested it in order that they save money or something.

Q And you reviewed the academic record of Dorothy?

A Well, you know, if I may, Mr. Litoff presented me with a significant amount of data that he wanted me to review and I looked at some of that and I looked at the part that I thought was relevant. However, as I realized the extent of the material that he wanted me to review, I had to make it clear to Mr. Litoff that I was not there to render an opinion. I could not make a decision whether Dorothy or Mrs. Pinter based on material he presented me and we actually had to cancel one appointment because he had a difficult time understanding that all I was to do was to do a psychological assessment to see if he was -- and I'm trying to think of the word I used when I talked to him -- coherent. And, I think, I wrote in my report that he and I had a little discussion about the meaning and definition and ability to assess coherent but that was the limit of my assessment.

Yes, I feel, he realized the extent of everything that he wanted and say it was not going to be useful for Mr. Lithoff. Yes, I did look over the nine items that I listed.

Q And that is included in a letter from Social Services dated October 11th, Grand Forks County Social Services?

[**14]A Yes. Most of that once again was not useful to me; but, yes, it was there.

Q In your testing of Mr. Lithoff, what were your conclusions as to his psychological condition?

A Well, I have some concerns initially about Mr. Lithoff that, I think, that the request that Judge Peeples had for the order for testing was quite appropriate because this individual presented in a way that was knocking heads. He

presented in a way that concerned me. In the testing there was not any acute disturbance of his thinking. The man based on informal assessment of intelligence, appears to be quite bright; perhaps, super intellectual functioning. There was not an acute psychological disturbance.

What I mean by that, he did not lose touch with reality. He was not delusional. He was able, as most people are, to look at the world and recognize it for the way it is and to make reasonable assumptions about himself and about others.

The part that I was concerned about is that this is an individual whose diagnosis is likely to be a person to have a personality disorder. And I don't know how familiar the Court is with personality disorders but what that means is just a characteristic style of functioning in the world that because that is associates or leads to occupational and social environmental problems. That he deems the particular [**15]personality disorder suggests an individual meaning you can still comport and have difficulty in dealing with emotions with interpersonal situations. Quite awkward socially, very isolated, lack of reciprocal, lack of actual social support system.

I had some concerns about paranoia. Now the paranoia I need to clarify is not that I saw him as paranoid because I did not see a clinical evaluation in terms of his functioning that he was thinking people were out to get him but what I mean some paranoia sub-clinical paranoia. What I mean by the paranoia is that when he's more stressed or when there is -- when there is increased paranoia with increased stress in the environment, he may come and feel like people are doing it to him. It's difficult for me to say if that paranoia is part of his characteristic personality because litigation, particularly custody, I gather does raise peoples

paranoia feeling that people are after him. He does feel as though there is someone trying to hurt him.

In this case I feel he feels that way towards the court system and Mrs. Pinter. The part of his personality that I do think are of concern is that he's fairly narcissistic and what I mean by that is that he is somewhat focussed on his own needs, lacking empathy. He is what people maybe used to say eccentric. Somewhat different in his view of the world but there is not evidence of a [**16]thought disorder and there is no evidence that he's violent, aggressive, psychotic or acutely mentally ill.

I need to clarify that psychological testing cannot guarantee or predict violence but this is an individual with the best predictor of violence and aggressive behavior and based on the little I know about this individual and based on his testing, he seems to be much more into intellectualizing, arguing, angry verbally than physically but I do think even those personality disorders do not typically respond to or take psychotropic medication that the psychiatric counseling would be appropriate.

Q Dr. Trevino, in your opinion after evaluating Mr. Litoff, does he pose a danger to his child, Dorothy?

MS. JENSEN: I have the same objection, Your Honor. I don't think there is any foundation for this testimony. Her knowledge is limited. She's indicated she's testifying only with respect to a limited psychological evaluation. I don't think there is any foundation.

THE COURT: Overruled. You may answer the question.

THE WITNESS: I cannot answer in terms of specific people but I can say based on his assessment the criteria -- is

this individual a danger to himself or others is not met. And in Texas that is the criteria that we use. [**17]Is he a danger to himself or others? I do not see that.

MR. OMDAHL: I have no further questions.

THE COURT: You may cross-examine, Ms. Jensen.

CROSS-EXAMINATION BY MS. JENSEN:

Q Doctor, can you hear me? This is Patti Jensen. I'm Mrs. Pinter's attorney.

A Yes, Ms. Jensen, I can hear you fine.

Q Mr. Litoff was self-referred; is that what you're saying?

A Well, I know that Judge Peeples wrote my name in the order. How Mr. Litoff got my name, I don't know. It may have been Judge Peeples or it may have been Judy Wemmert who is another attorney in San Antonio. I don't know.

Q You have already indicated that your contact in this case has been very limited; is that correct?

A That's correct.

Q You're not here making any recommendation with respect to visitation for Dorothy with her father?

A No, Ma'am. I'm here to clarify his mental condition.

Q And when you said just now that you did not find that Mr. Litoff was a danger to himself or others and that was the criteria used in Texas

A Imminent danger to himself or others.

[**18]Q That's our criteria here in North Dakota for commitment proceedings, mental health proceedings, is that what you're referring to?

A Yes, Ma'am.

Q And that's nothing whatsoever with what maybe -

MR. OMDAHL: Objection. She's telling the witness and asking questions.

THE COURT: Overruled. Finish the question, first of all.

Q (Continuing Ms. Jensen) Doctor, my question, the commitment standard as to whether someone needs to be voluntarily put in a hospital to protect themselves or to protect others from them. Knowing that you're a forensic psychologist, in your opinion, that has nothing to do with the standard relative to establishing what is best for a child for visitation rights?

A Two points, Ms. Jensen. One, I'm not a forensic psychologist. I'm not diplomatic. I'm a psychologist. I do quite a bit of forensic work, but secondly you're right the only basis I can think of to clarify his testing because that's really all I have done. I can't say anything in terms of his visitation with his daughter or the child's best interest. I don't know her.

Q Thank you. Ma'am. You said in your testimony when Mr. Omdahl was questioning you that Mr. Litoff presented [**19]in a way that concerned me?

A Yes, Ma'am.

Q If I wrote that down correct, could you outline for Judge Bohlman, please, what caused you concern when you first met him?

A This is an individual who was unkept. Looking as though he has slept in his clothes. I don't mean to be offensive but on one occasion I saw him he looked as though he had not bathed for several days.

On another occasion after he was agitated, he had a difficult time understanding the purpose of the assessment and was somewhat alarming to other patients.

Q You recommended, Doctor, I'm looking -- (Pause) I'm back. Doctor, this is Patti Jensen, can you hear me?

A Yes, Ma'am.

Q I forgot where I was. I think I was asking you to maybe elaborate on your statement that Mr. Litoff's presentation concerned you?

A Yes.

Q Do you have any other comment?

A No, I finished.

Q Now, I'm looking at Exhibit 3 which is your report and you have talked a little bit about the narcissistic diagnosis that you made?

[**20]A Yes, I did.

Q And you talked about the avoidant diagnosis that you made?

A Yes.

Q But your report also indicates that he has schizotypal features?

A That's correct.

Q For the Court Reporter, could you please go a little slower. What does that mean?

A Schizotypal is an individual who presents with some behavior difficulties and some eccentric kind of orientation to the world.

Q You also and I'm looking at the bottom of the page that had your diagnostic impression on it, where you have a sentence that indicated his isolation and lack of reciprocal interpersonal relationships is a concern, particularly if his interaction with Dorothy becomes conflicted?

A Yes, Ma'am.

Q Did you find the sentence I was referring to?

A Yes, Ma'am.

Q Can you elaborate on that a little bit as to why that would concern you especially with a 14-year-old girl?

A I can't. I really -- I don't think I can make much of a statement about a 14-year-old girl. I don't know [**21]her

at all. What I said particularly if his interactions for any contact anyway. Is that what you're saying? What that would concern me is that if he has his point of view in mind and doesn't open himself to and becomes argumentative or stubborn or does not understand other people's point of view and you have what sounds like a timid adolescent, who is not assertive or able to stand up or any individual, for example, becomes overwhelmed and timid and then this would be a problem in having that person alone if there is no one that person can call to help or have backing on their side.

Q Doctor, you indicated or you used a secretary as an example, did Mr. Litoff do something intimidating with your secretary?

A No but she was intimidated by his agitation and she was concerned.

Q Your recommendation is that there be a psychiatric consultation, is that correct?

A Yes.

Q Based on my testing of this individual, Ma'am, you believe that further consultation with a professional would be helpful; is that correct?

A I think it might be helpful.

Q Ma'am, do you know whether or not Mr. Litoff has had a psychiatric consultation?

A I don't know that.

[**22]Q And is this a recommendation that you relate to him?

A No, Ma'am.

Q But he would have had that recommendation by virtue of the report that is now Exhibit 3, correct?

A Yes, Ma'am.

Q Could you elaborate to Judge Bohlman why you think a psychiatric evaluation would be helpful to this gentleman?

A That might help him somewhat. There also is some depression and also some agitation and isolation and sometimes with a personality disorder that can help somewhat

MS. JENSEN: I think I'm done, Doctor.

Q (Continuing Ms. Jensen) Do you know if he's under the care of any medical doctor at this time?

A I have no idea.

Q Do you know if he has any prescriptions for any medication at this time?

A I have no idea.

MS. JENSEN: Thank you. I'm finished.

THE COURT: Mr. Omdahl, do you have anything else?

MR. OMDAHL: I have no further questions.

THE COURT: Dr. Trevino, I think, that's all then for your testimony. We thank you for attending and

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**[**41](Marked for Identification Defendant's Exhibit 4 by the Court Reporter)**

THE COURT: Dr. Simun, would you please come forward and be sworn as a witness.

**ANN E. SIMUN,**

a witness called on behalf of the Defendant, having been first duly sworn by the Court, was examined, and testified, as follows:

**DIRECT EXAMINATION BY MS. JENSEN:**

Q Would you state your name?

A Ann Eugenia Simun.

Q What is your professional address?

A 2808 - 17th Avenue South, Grand Forks, North Dakota 58201.

Q That's an office that houses Lipp, Carlson, Lornmen and Witucki, Psychologists, correct?

A That's correct.

Q Including yourself; is that correct?

A Yes.

Q Are you a licensed psychologist licensed in the State of North Dakota?

A Yes.

Q I have in front of me, Dr. Simun, what is marked as Defendant's Exhibit 4, and that includes your curriculum vitae as well as correspondence and a report relative to [**42]Dorothy Litoff in this case. Taking a look at the first couple of pages is that something that would help Judge Bohlman understand your credentials and your educational work experience? Rather than recite for us your education, is that curriculum vitae complete and would that help Judge Bohlman understand your credentials?

A Yes.

Q Do you know Dorothy Litoff?

A Yes.

Q When did you first meet Dorothy?

A Dorothy came in initially on June 3 of 2002 to my office at Lipp, Carlson. I met the mother and the daughter on the same day.

Q Was there anyone else that you remember. Doctor, with Helen and Dorothy when they came in?

A The siblings were also there.

Q Helen has two younger children; is that correct?

A Yes.

Q How did you come to meet her? Could you tell the Court how the referral was made.

A Yes. Dorothy's mother Helen brought her into my office and had called up the office a few days before and asked for an early appointment. At that phone call she

indicated that she had been referred to get Dorothy individual counseling under the recommendation of the Grand [**43]Forks County Social Services.

Q What information other than that did you have prior to actually physically seeing Dorothy?

A That's about it. We knew that they had insurance under Tri-Care. We knew their addresses and the reason for the referral. That's all we have before they come down.

Q Dr. Simun, there are volumes of papers in various states involving litigation with Dorothy's visitation with her father, you did not have any of that documentation before you began?

A No, I did not know much about that. Even at the first visit, the first visit was concentrated on getting a history.

Q How did Dorothy present herself to you?

A She was very reticent. A lot of adolescents are that way when they first come in but she was more reticent than most. She's almost shy, very quiet. I noticed that her behavior with me in the office was markedly different from her behavior in the waiting room with siblings.

Q Let's start here, Dr. Simun. In Exhibit 4 and I'm hoping I have these in order. There is a copy of a June 25 or maybe June 6th, let's look here. There is a copy of some letters that were provided to the Court in Texas, correct?

[**44]A Yes.

Q You were asked to have some input in a proceeding that was going on in San Antonio, Texas.

A Actually, I was asked to testify and it was simply not possible. So in lieu of testimony, I created a summary for the Court.

Q And the documents are included in Exhibit 4? Do you have your copy of that?

A I brought that here.

MS. JENSEN: We would offer No. 4, Your Honor.

MR. OMDAHL: No objection.

THE COURT: Defendant's Exhibit No. 4 is received.

Q (Continuing Ms. Jensen) The first document I have, Dr Simun, is a letter of June 25, 2002 and that is a letter that you wrote to the District Court in Bexar County, San Antonio, Texas?

A Yes, I have it here.

Q Could you tell the Court how many visits you had with Dorothy between June 3 when you first saw her and June 25th when you provided some input to the Court?

A It would have been three if I'm not mistaken. I think she came in every week between the 3rd and the 25th. So, it would have been three visits.

Q Did you do any written testing in those first [**45]three or four visits with Dorothy?

A It wasn't necessary. She was very open at the first visit and willing to talk. It wasn't necessary to do any formalized testing.

Q Was there a point at which you did a formal psychological evaluation?

A I did a formal psychological evaluation the first visit. I did not include testing. That's typical with adolescents.

Q Let's go back to where I interrupted you, you said Dorothy's behavior was remarkably different in your office than she was with her siblings, could you explain that to the Court a little bit.

A She seemed somewhat reticent to talk to me, to talk to me about personal things. She was almost monosynaptic in her response. She would nod. She would rarely look at me. She would be looking at the floor frequently with eyes closed.

When I saw her up in the waiting room with her siblings and engaging them in play, she was a little more relaxed and she had more physical expressions. And as her treatment progressed, she has related a lot better to me. Initially, she did not want to be there was my impression.

Q So, from June 3rd then of 2002 until today have you had an ongoing therapeutic relationship with Dorothy?

[**46]A Yes, I have.

Q And in the beginning I understand it was every week.

A Initially, we tried every week and then as she showed improvement, we went to less frequent sessions of once every two or three weeks.

Q Can you tell the Court about when that happened?

A I think it was in October that we went to less frequent sessions. She was doing much better. I didn't bring all of the dates of the visits unfortunately. I'm going to have to see.

Q Would it be your best recollection, Doctor, from June to October the weekly sessions were necessary and after that you saw behavioral improvement?

A Yes. Yes. She seemed to be functioning better. She was much less tearful in session. She could describe stressful events without being overly anxious or tearful. She seems to be adjusting better. She was having fewer troubles with her social functioning at school.

Q All right. Did she discuss with you her relationship and her visitation with her father?

A Yes, she did.

Q Did she do that at the first session?

A A little bit. She was somewhat reticent to talk about it.

[**47]Q Define what you mean by reticent?

A It's like unwilling. A fear based on unwillingness.

Q Do you recall whether she did visit with you in that first session regarding her father?

A She was able to tell me that she didn't want to go on visits; but that she was being made to go. And when I

asked her who was making her, she said that her parents were making her go. Her parents Helen and her husband but that she understood that they were telling her it was because she was required to go by the court. She knew that but she still felt like it was her mother making her go.

Q Can you tell us about how long it took for you to establish some trust and rapport with Dorothy so she was more able to visit?

A Probably two or three visits. She started opening up more about the third visit.

Q Was there ever a point, Dr. Simun, where Dorothy made disclosure to you in a therapeutic setting where you felt it was required of you to make a report to the Grand Forks County Social Service Agency as a result of those disclosures?

A Yes, I did.

Q And can you tell the Court when you got to the point as a mandatory reporter that you felt you needed to do [**48]that?

A Actually on the first visit based on a few things that she said but also based on the comments from her mother. I felt that I needed to make sure that this had been reported formally.

Q Let's talk not about what Helen may have reported to you but what Dorothy said. What in that first visit caused you enough concern to make the social service report?

A She indicated that the reason she didn't want to visit her dad was because of the way he had behaved

toward her on a lengthy visit she had had in the summertime, I think, in her 8th grade. She indicated that he had made her feel uncomfortable making comments about the development of her secondary sexual characteristics. She was rather vague initially. I didn't want to press her on the first visit. She felt she was being exposed in a sexual manner and comments were made about her sexual development.

Q And that caused enough concern to report?

A Yes. It made me very concerned because I felt that she was so obviously affected by it.

Q And from her presentation to you, what lead you to the conclusion that she was so obviously affected by it. What was she doing.

A Tears running down her face. She was unable to [**49]look at me. Her body was hung over and turned away from me as if she was ashamed. She expressed fear at disclosing this and fear at having to have another visit.

Q As your process went forward with Dorothy, did she then make further disclosures?

A Yes, she did. She explained to me that in addition to the comments that had been made on, I think, it was multiple days, she indicated, I think, the visit was getting long, forty-five days. This sort of comments had been made almost every day. And, in addition, to that on almost a daily basis for many weeks that she said that her father had been masturbating himself in the room with her, with her present, and that she felt extremely uncomfortable by that and she made her discomfort known and the behavior was continued.

Q How long have you been practicing, Doctor?

A I, initially, got a master's level license in 1998 and I have been practicing since then.

Q In your profession do you receive training with respect to the assessment of patient's veracity, their credibility? How do you, as a psychologist, determine if there is an adolescent reporting to you if the reporting is accurate?

A Well, you want to look for a combination of things. You want to see that the statements are consistent [**50]across time. If they tell you about an event that their description of the event does not change. Sometimes you have an increase in disclosure but the basis of the facts doesn't change. If something happened in a car, they don't say two weeks later that the thing happened in a room. You also look at their body language, tone of voice and emotional responses are consistent with what they are disclosing. If you have someone who is telling you something terrible happened to them and they're smiling at you. That's usually of concern. It can mean several things. It can mean they are not being honest.

When someone is telling you something that would make an ordinary person tearful or ashamed and showing now an emotional response, body language that showed shame or sadness then it's consistent with the content of what they're saying.

Also, you look at motivation again. Is there a reason for the person to be making up a story. A person, for example, who comes in for a disability evaluation and who is telling you that they are extremely depressed, can't function and this and that. You have to take into consideration their possible motivation or aggravation.

Q Did you make that type of assessment with Dorothy? Did you consciously say – is this child telling me the truth?

[**51]A Yes, it's always a consideration and one of the things that I did was assess the fact that she actually seemed to be reluctant to tell me these things. She was not walking into my office and the first thing out of her mouth is, I don't want to go over there because he does these things to me. The second thing, the person is willing to continue to come to treatment.

Q And was she willing to come?

A Yes, she was. If a person is simply not willing and this does happen especially in custody cases. It happens a lot. A person comes in with their parent and the parents are complaining of psychosis and has documentation they can use in court. In the majority of time I see that chid once or twice. They go to court or write a letter. I never see them again. And that's usually somewhat indicative maybe a motive to get help for the child but motive is to have an impact on the court.

In this case, Mrs. Pinter frequently would call me and say I'm concerned. I saw this with Dorothy, her grade. This or that. She seems to be sad about school. I talked to the school and they would say, we talked to the mom. She's concerned. The school counselor I talked to they were concerned. It really seemed like she had been referred for counseling initially by the school psychologist or counsellor because she showed signs in school and when the [**52]counselor talked to Helen and Helen talked to Dorothy I said I don't want to go to counselor. It seems as if there is not a lot of evidence that Dorothy's reason for coming is because she wanted to make trouble or anything like that.

In fact, she seems, as I said, some what reticent to disclose these things.

Q Did you come to an opinion as to whether she was being honest with you?

A My opinion is that she was being honest with me.

Q As your therapy with Dorothy continued , did she make some progress from you stand point?

A Yes, she did.

Q What were you working on during that period of time? What was the goal?

A The goal initially was to help her deal with her emotions regarding the allegations and she would tell me things about how she felt with regard to the things that she had happen to her. In addition because of her emotional adjustment difficulty which I feel are from the alleged maltreatment, she was having trouble dealing with stress, which is common.

Q That was my next question. Did you make a diagnosis?

A I made the diagnosis of an adjustment disorder.

Q What does that mean to us lay people, doctor?

[**53]A That means that something bad happened to her and she is still having trouble dealing with it even a month or two afterwards. Normally, when something happens to us, we use our coping skills and within a period of time we begin to recover. She was continuing to have significant emotional psychological problems in terms of the

event. She was having trouble concentrating. She was frequently tearful. She was highly irritable and having conflict with her mom and with some of her peers at school because of her inability to tolerate small things.

Q Causation, doctor, when you look at her adjustment disorder, were you able to come to any conclusion with respect to what was causing or what was the triggering event?

A Yes. In fact, with the school and in talking with mom and in talking with Dorothy it seems prior to these events that summer they did not seem to be having symptoms of severe anxiety or depression symptoms. It seems that those symptoms came on during and after that time. The school counselor also indicated that there was a clear correlation in her behavior between when she had visits scheduled with her father. And for the days leading up to a visit, they would see an increase in the antidepressive behavior and the poor concentration.

Q Let's talk June to October before you had the [**54]visits, you had scheduled the visits every week, every other week. Do you know what the situation was with telephone contact between Dorothy and her father during that period of time?

A She was having telephone conversations on a regular basis with her father.

Q Did she visit with you about those telephone conversations?

A Yes. She indicated to me that she did not like having conversations with him because she continued to be angry with him and upset at him for what occurred on the visit and his unwillingness to accept responsibility for what

happened. She also said that he had repeatedly told her to take back her accusations.

Q Dorothy did disclose to you over those months that her father was pressuring her to recant?

A On a frequent basis. Probably, at least once a month during their conversation she would say that he had been telling her that she was causing him all kinds of problems with these stories and that she needed to tell people that the stories were not true. These conversations caused her distress.

Q Did she seem tearful?

A Oh, yes.

Q Was there a point in time, Dr. Simun, where you [**55]actually made a recommendation as Dorothy's treating psychologist as to whether these calls should continue or seize?

A Yes. I met with the Pinters and I expressed that I felt we should consider allowing Dorothy to make the determination if she was going to answer a telephone call when it came in.

Q Was there a point at which you understand Dorothy made that choice and eliminated the telephone calls?

A Yes. I remember we were sitting Mr. & Mrs. Pinter and Dorothy and myself -- I don't have the exact date. We were sitting in my office. I asked them, is there a way for her to make the determination that maybe when the call came, if she's feeling like she wants to take the call, fine. They said, I don't know whether we're allowed to do that.

He had the right to contact her. I said, well, for her well being if we can let her make that decision. There were statements, I don't want to talk to him at all, ever. I said, let's go with each time the call comes to make the decision. And Mrs. Pinter, if you like, can explain to him, tonight she doesn't feel like talking. That's what they agreed to do.

Q Did the phone calls stop before October, if you know?

A No, I think, it was after that.

[**56]Q Was there a point in time, Doctor, where you ever felt that Dorothy needed to be referred to a medical doctor for prescription of any medication?

A Yes. I became concerned about -- I think it might have been November or December. Her symptomatologies started to progress. She had been showing so much improvement. She was quite tearful. She was becoming inattentive again. Her grades were slipping. She was having a lot of trouble. She was irritable at home. I talked to them about the possibility of medication referral for antidepressant.

Q Why did you think an antidepressant was necessary? Had her symptoms increased?

A Absolutely. It was not seeming to resolve. The parents were working hard. The school was working hard. I was working with her.

Q You were working with collateral sources with the people at the school?

A Yes. And I also contacted Grand Forks County Social Services. I had been working all along with everyone who is involved.

Q All right. You had worked with Dorothy's stepfather?

A Yes, the mother.

Q But not her father, is that correct?

[**57]A No. I never met him.

Q All right.

A Only telephone calls and letters is the only contact I have had.

Q Have you had telephone calls with her father?

A Yes. He phoned me once, I think, it was in July right before a court hearing. I was not allowed to speaking with him because of the privilege issues.

Q Did you have conversation with him or did he just leave a message?

A He phoned me and indicated that he wanted to speak to me. I said that I could listen to him but that I really couldn't tell him anything because the primary custodial parent had not provided a release of information and Dorothy had not provided a release of information to him. So I listened to him but I did not give him any information.

Q Do you recall what he told you during that conversation?

A Yes. I think he felt that I was incorrect in my assessment. He felt that the source of the problem was Mrs. Pinter. She was coaching Dorothy to make things up. He was very upset that I had written the statements that I wrote to the Court. He didn't think they were accurate.

Q Did you have any subsequent conversation with [**58]him after that initial call?

A Well, I indicated to him that I understood how he felt. I couldn't really defend this. I couldn't give him any information. He continued to ask me questions and try to get information and I continued to explain that it's privileged and I'm not allowed to disclose anything without permission.

Q Did he subsequently write to you?

A Yes, he did. I didn't bring it with me. Yes, he did.

Q Do you remember the content of his writing to you?

A The majority of the letter from my best recall was me aligning with Mrs. Pinter. He also sent some documents with Dorothy's grades and there was a comment that Dorothy's grades were fine before and now they're not fine and that's because Mrs. Pinter isn't raising her right. There was some comments about Mrs. Pinter having been investigated for child abuse herself. And a denial, I think, that he had done any of the things that he was accused of, if I recall.

Q Your report and once Judge Bohlman takes a look at it, I believe, there is a comment in your most recent report or update that indicates there was an escalation of Dorothy's

fear and anxiety around the Christmas Holidays this [**59]year, is that true?

A Yes.

Q And what did Dorothy share with you? Let's take the last thirty days with respect to her father.

A She came in, I think, it was either around Thanksgiving or the beginning of the month of December and she was markedly more depressed than she had been and came in early. She comes in and she sits down and she's getting up and looking at things and she starts telling me things and she came in just like this and I had to ask her, are you okay? Are you okay? And after the third of asking, are you okay, tears came and after calming her, she stated that her dad is trying to change the custody decree and she was tearful that she would be forced to go back on visits with him.

Q What did you do, Dr. Simun, in that situation to help and treat Dorothy?

A Well, the main thing is to support her that I understand her feelings and we understand that she's tearful but we're going to do everything we can to keep her safe.

Q Has your diagnosis of Dorothy changed from June to now?

A It seemed that with the length of time that she was showing symptomatology, she appears to be worse and a lot of times the symptoms of adjustment disorder with depressed [**60]mood and major depression of her are similar. She could then met the criteria for major depression based on -- I'm looking for it -- based on the behaviors that

she was showing in the last few weeks. We're usually kind of careful. I thought I brought that with me.

Q Do you have the treatment report, her most recent one. In the last pages of Exhibit 4, January of 11th, 2003 that is in a treatment update, would that be it?

A I thought I brought it with me. I'm not with it.

Q I guess the question was had your diagnosis in the last six months changed at all?

A Well, in the last summer I had changed it to adjustment disorder recurring and more recently she's showing more symptomatology. She meeting the criteria for major depression. We're over labeling a child with that.

Q And just for our sake, Dr. Simun, why are psychologist reluctant to take a 14-year-old and diagnose major depression?

A It's a medical diagnosis that could follow her for the rest of her life and it can affect employment ability and insurability and a lot of times these problems are transient.

Q Do you believe, as we sit here today, that Dorothy needs psychiatric referral because of your concerns [**61]with a potential major depressive diagnosis?

A She might benefit from medication for depression, yes. It could be provided by a psychiatrist or a general practitioner.

Q All of your work over the months you have been treating her, have you learned of any other causation, any other triggering events that would help you understand or

explain the adjustment disorder that she's having other than her disclosure regarding her father's behavior?

A She had some adjustment issues with starting high school but I don't think it was excessive. It's kind of typical for freshman.

Q I was going to ask. Is it normal for a shy, introverted girl like Dorothy to have some adjustment issues with starting Central High School?

A Compounded by two factors. One her racial background was an impact because of how people are treated in town. And also there is much an issue of having to go to school on the Base which is a very small group where you know the kids and then going to town and being in a much bigger school. That often times happens going from junior high school to high school as in this case.

As far as causation, we have issues with respect to her father and then we have starting high school and moving from the Base to Central and those sorts of things?

[**62]A Yes.

Q Taking the other issue, not the issue with her father, did those, as you continued through therapeutic problems, resolve?

A That resolved fairly quickly. I gave her strategies on dealing with peers and mom and I were taking how we could get her involved in some after school activities that were at the school and she tried out for a play and things like that. Trying to get her involved in a group setting with kids from the high school so she would have more of a ability in acceptance.

Q All right. Doctor, would it be a fair statement what has not resolved for this little girl are the concerns that have been raised with respect to contact with her father?

A Yes. She continues to be concerned about going back there. She was quite upset by the Christmas card she got. That was the majority of her last session with dealing with her emotion over the letter that she said she received in the Christmas card from her dad which upset her greatly. She said, all he cares about is money. The whole thing was about money and he wants me to take back what I said about him.

Q Did she share with you the actual card that she received?

[**63]A Yes, she brought it with her.

Q I'm going to show you what has been marked as Defendant's Exhibit 2, and I tell you, Doctor, that is a photocopy of the card that Dorothy received from her father at Christmastime. Is that what she showed you?

A Yes. I had made a copy also.

MS. JENSEN: I would offer Exhibit No. 2, Your Honor.

MR. OMDAHL: No objection.

THE COURT: Exhibit 2 is received.

Q (Continuing Ms. Jensen) I will hand you a copy, Dr. Simun, could you talk a little bit for the Court about the content of this card and the impact that it would have on a girl in Dorothy's situation.

A She thought it was thoughtful to get a card. It's a holiday greeting card. She said, all right. And she saw the letter and she assumed it would be kind of like a form letter that people send out at Christmas like the letters we all send out and when she started reading it, she was kind of surprised at the content.

Q For example, about a quarter of the way down the first paragraph, Exhibit 2 says, and if the current circumstances continue eventually you will be disinherited. You will need help in paying for your college education and it talks about taking money from a trust.

[**64]A Yes.

Q You read all that, correct?

A Yes. And her initial response was, I don't know why he thinks I care about his money. I don't care. And the second thing was, I think, he wants me to lie and say it didn't happen, and if I lie, and say it doesn't happen then he will give me this money. She does believe there is a trust and believes everything he says he will do if the matter is not resolved.

Q What I'm interested in, Doctor, from a psychological perspective and knowing Dorothy and having treated her for all the months you have, can you help us understand the psychological impact that this letter would have had on her in December of 2002?

A Well, two things. She was very hurt by the impersonal nature of the letter. She says, look, it's Christmas and instead of asking her how she's doing or feeling or telling her things about him or saying nice things, it's basically conveyed as a threat. That was very hurtful to her. She doesn't get a lot of letter from her dad. And when

she got a letter from her dad it was focused on stop making me miserable. Look at I'm making him suffer. I'm hurting him. She burst into tears. She said, he doesn't even care about me. All he cares about is the money and how it affects me. He doesn't care about me at all.

[**65]Q Does it set off this type of communication from a parent and specifically for Dorothy? Do you think this sets her back in anyway? What does it do to her overall psychiatric health right now?

A Two things. One it's a sense of rejection. The most emotional I got out of her was she thinks because of the content of the letter it's like he doesn't care about me. It' s a rejection and yes that is a terribly difficult thing for any adolescent but particularly a fragile adolescent. She became very upset. She said, look at this. He's calling me a brat. So I asked him to get me strawberry milk. He hates me for that. She was so upset that it was all so negative and it kind of focused on how it's her fault. She always feels ashamed as most people do if they're a victim of maltreatment and now she's being told, not only is this not her fault but it's Dorothy's fault that her father is unhappy.

Q What is your plan for ongoing work with Dorothy? What does she need right now, Doctor?

A She has been scheduled to come every week or every other week as my schedule permits. We will work on -- probably, the main focus will be getting her mood back up so she can concentrate on school. It has been affecting her schooling significantly. Also, we'll work on self-esteem. She just was crushed.

[**66]Q All right. Recognizing that you have not completed a psychological evaluation on Mr. Litoff nor had any communication with him other than a phone call and

some correspondence, do you feel comfortable, as we sit here today, using a best interest standard, what is best for Dorothy? Can you help the Court with any recommendation as to what would best serve her interest right now knowing that Mr. Litoff is here asking that he have unsupervised and resumed visitation with her, just yes or not.

A Yes.

MR. OMDAHL: There is no foundation here. We have the same objection we went through with Ms. Jensen and my expert. She's not interviewed the father. She has no understanding of the interpersonal relationship from the father's prospective. So she's not in a position to use the best interest standard. She's not been a Guardian ad Litem and therefore not qualified to make a recommendation as to what the visitation should be with somebody she doesn't and has never met. I would object.

THE COURT: I appreciate the objection I think I would say the testimony would have to be limited not to the best interest factors as such which are basically legal factors but the answer would have to address the question from the standpoint of what you know from your work with Dorothy and her prospective.

[**67]With that understanding, I will overrule the objection.

THE WITNESS: I believe that the best interest situation for Dorothy emotionally would be to allow her to have control over her contact with her father. So if she chooses to accept a letter or accept a telephone call or chooses to initiate a phone call that is psychologically helpful to her as it puts her back in control of her contact as far as visitation, her own experience, her behavior and her words of her fear of a visit. My recommendation to her and

to her parents has been not to require her to have a visit if she feels that it's unwanted and I continue to feel that is the best thing.

Q (Continuing Ms. Jensen) For Dorothy's psychological well being, you're advocating that she have control over the letters and phone calls, correct?

A Yes. I also suggested that the letters and phone calls that she accepted be monitored because it appears that she was being pressured to recant her allegations and that was in itself harmful.

Q Would that be the result of the Christmas letter?

A Yes. And the telephone calls she explained to me.

Q Both.

[**68]A Yes.

Q Why is it important for Dorothy's psychological well being to be allowed to have this control?

A As far as I'm concerned, she was a victim of sexual maltreatment. And that's an opinion. And it's my opinion. To put her in a position where that could occur again is extremely harmful to her emotionally. It devalues her response to what happened the first time. If someone hurts you and you tell the people that are taking care of you that you're hurt and they put you back in the exact same situation, it makes you feel worthless. It also was really impacting her relationship with her mother to be required to talk to him and to be required to go on visits. She was very angry that her mother was making her go and making her talk to him. And until we worked that out in therapy, it was

really affecting their relationship a great deal. She felt her mother was failing to protect her from harm.

Q Right now, Ma'am, there is no request for any supervised visitation. Mr. Litoff is saying, I want my visitation in an unsupervised setting. If it were suggested to the Court that supervision of a visitation be a personal, face-to-face visitation, would that make this safe? Do you have any comment in regard to that suggestion as it relates to Dorothy's psychological well being.

A I would be more comfortable with supervised than [**69]an unsupervised visit, absolutely.

Q but you're saying more comfortable, would you recommend it?

A No. I think Dorothy at this point is wanting no contact and that should be respected because if it forces Dorothy to have contact and if supervised, she would be devalued in her mind, and her experience of trauma was being devalued by others.

Q I think I have one last question. Doctor, as indicated to her mother and I have made the request to the Court that she be allowed in the Judge's Office without her parents present to be able to visit with the Court. Knowing Dorothy in the therapeutic setting as you do, do you have an comment as to whether it's a good idea as far as her psychological well being goes.

A It kind of puts her in a position of having to be talking in a negative way about her Dad which she doesn't like to do. She may or may not be willing to do that.

Q If she wants to, how do you feel about it?

A I think giving her control over the extent of her disclosure is probably the best thing. If she wants to do it then it might be good for her.

Q Have you formed any opinion with respect to whether there maybe other things that have occurred in Dorothy's life with her visitation with her father that she [**70]has not yet disclosed to you?

A Yes. My distinct impression is there is more there than what she's disclosed. The severity of her reaction seems somewhat out of proportion to the events described. So my suspicion has been from the very beginning that I don't know everything.

MS. JENSEN: Thank you, Dr. Simun, that's all I have.

THE COURT: Mr. Omdahl.

MR. OMDAHL: Thank you, Your Honor.

**CROSS-EXAMINATION BY MR. OMDAHL:**

Q Doctor, in your report or first off I'm going to go to the letter here from Mr. Litoff that Exhibit you just talked about.

A The Christmas card letter?

Q The Christmas card letter. In there the last paragraph, did you happen to read it?

A I read the whole thing.

Q That last paragraph trying to get a normal daughter relationship; is that correct?

A Yes.

Q Did you talk to Dorothy about that paragraph?

A Yes. It would be her wish also that none of this ever happened and her and her dad have a normal relationship. She agrees with that.

[**71]Q But for the visit in the summer of 2001, the June visit, that's what they would have?

A No. We didn't really get into any questions about that but there was other stuff that we have talked about. No one asked me. I didn't bring it up. She talked about a lot of other things that happened prior to the summer. Nothing that had any severe or as much of an impact. She brought up other things about the household and about her dad's behavior and things but nothing quite that traumatic.

Q Does she want to have a normal father/daughter relationship with her father?

A She would like to have a normal relationship with him.

Q But she feels at this time it's not possible?

A No. She feels that she's been hurt by him and he's calling her a liar and telling her if she doesn't stop lying that he's going to take all her money away.

Q We'll get to that but I do want to know a little bit about being a brat. Did you ask her about being a brat on that vacation?

A Did I ask her if it was true, you mean?

Q Right.

A No.

Q You didn't discuss that?

A She said she brought it up here. She said I [**72]don't think I'm a brat when I'm in a restaurant and I wanted strawberry milk. I don't think that's acting like a brat. She addressed that herself.

Q And did you talk to her about listening to filthy rap music?

A She does listen to different types of contemporary music. When they were driving in the car she would put on the radio and she chose the station and often times he didn't like the station. She thought it was funny that he referred to it as filthy. She said something like -- well, you know, they sensor the radio anyway. It's like it can't be really bad. It was played on the radio. She thought that was kind of a strange comment.

Q How about the letter, the comment where he tried to do everything to please her. Did you talk to her about what he did to please her?

A He would ask her where she wanted to eat and he would let her go where she wanted and she said he seemed to think because she picked the restaurant that mean she was being bratty. She recalls it as him asking her which place do you want to eat.

Q Okay. I do have some concerns about your training. How many years have you been practicing?

A Since 1990 with a master's credentials in child and adolescence. I got my doctorate in '98.

[**73]Q Okay. Do you -- have you reviewed the report from Texas? Were you aware of the existence of a report in Texas from the Guardian ad Litern, the child protective reports in Texas?

A The Attorney -- what was his name? Mr. Holland?

Q Right.

A Mr. Holland sent me some documentation. There was a psychological evaluation of Dorothy. There was a Guardian ad Litem Report. There was complaints and cross-complaints about maltreatment. I don't know what portion of it I had but there were reports that Mrs. Pinter had been alleged, you know, of child neglect and child maltreatment and reports that Mr, Litoff had been alleged for child maltreatment and negligence. I had stuff against both. There was testimony against both parents. There was a report where both the parents had been examined by -- I don't remember her name. There was reports on Dorothy and both her parents where they had been evaluated by -- I'm thinking a master's level clinician, LCR or something like that.

I have quite a bit of background while this was going on in July.

Q You were aware that Mrs. Pinter was assessed and found that she was responsible for child maltreatment of Dorothy.

A There was a finding. I don't remember that it [**74]said that it was substantiated or not. I don't

remember. I'm sorry. I don't have the exact response. There was allegations. There was quite a lot of documentation.

Q Were you aware of the finding by the Texas Department of Human Services where she had been given an in-home case worker?

MS. JENSEN: I would object at this point as irrelevant. This isn't a custody case. It's simply a visitation case.

THE COURT: Mr. Omdahl.

MR. OMDAHL: What I'm getting at here is to show the conflict. There is a basis in establishing that it's maybe something else other than Mr. Litoff that is a reason for her opinions that she hasn't looked into I don't think by missing what she's missed would indicate that it's not just Mr. Litoff that Dorothy is having these problems that she's diagnosed with.

THE COURT: All right. Very well. You may answer. The objection is overruled.

THE WITNESS: Yes, Mrs. Pinter has told me that she had involvement with CPS in Texas. She indicated that to me. I knew that. I don't think I had the report from them detailing what the complaints were. Yes, I was aware.

Q (Continuing Mr. Omdahl) Were you aware of the visitation denials that Mrs. Pinter had conducted in Texas?

[**75]A Yes.

Q You were aware that she was denying visitation in Texas?

A I was aware that she wanted to deny visitation. I don't have all the legal papers. I know she told me that she had -- this was the second or third time that they had been to court to argue this point.

Q Were you aware that she was found in contempt of Court for violating the visitation orders on eight separate occasions?

A No.

Q Were you aware and in your report you state that and I want to be sure what you wrote. The last sentence on your report.

A Which one.

Q On the second page, the January 11th, on your psychological evaluation and the June 6th, the second page, the sentence right before the Social History.

A Yes.

Q You state, she states she has few outside activities and friends because her parents restrict her comings and goings.

Also in the same report you indicate that Dorothy indicates that she has very few interests. Her mother and father restrict her freedom significantly

[**76]A She did say that.

Q And further down in the last sentence indicates the parents do not let her go out with friends very frequently

A Yes.

Q You also on the next page, it goes on where you have indicated in the middle there, she noted she had difficulty adjusting to being in Grand Forks?

A Yes.

Q Now in light of those sentences, do you think what affect her current situation in Grand Forks with her step-father and her restrictions and I understand she was permanently and indefinitely grounded because she was twenty-three minutes late coming back from the pool.

A They were concerned about her safety. They didn't know the area very well. We have actually talked about that. It's my belief on the Air Base she's fairly safe going to the pool and coming back. They have lightened up or a lot of things. They were very concerned about her safety and well being. She could be hurt or snatched. That's common when people move to unfamiliar areas that they are concerned about the safety. We have been working on that issue.

However, it affected her was your question?

Q Yes.

[**77]A That would be about five minutes or ten minutes of a fifty minute session might be spent on parenting, her issues with her parents. That's not uncommon. All teenagers think their parents are restrictive. That's fairly common.

Q Doctor, you have stated that she has very few interests and activities primarily because of her restrictions?

A That's no longer true. We have been working on her earning more freedom by becoming more responsible. If she wasn't completing her responsibilities at home and school and wanting to be engaging in extracurricular activities, she began improving and get her home work done and trying to work on her grades. They actually -- we had a discussion if she got her grades up to a certain point that she was going to try and find a volunteer job somewhere near the school. Unfortunately, she feel down on her home work and the grades dropped again. We were working on bringing those up. So she can get more freedom outside the home.

Q You also indicated she did very well in school in Texas?

A Yes. The standards are not the same paramount as they are in Grand Forks. I used to live in San Antonio. It's not the same.

Q And this restriction of activities do you think which was done is lessening up now but she was restricted on [**78]that prior occasion to you seeing her; is that correct?

A Yes. She would do something and she would get in trouble and she would get grounded and she still does things and gets grounded.

At this point, her grades are below what her parents want and she's supposed to be getting a weekly progress report from her teachers on her grades but Dorothy hasn't quite gotten that taken care of yet. But yet they have been willing to consider my opinions about that.

I think my personal opinion from my background, they're worried about her welfare and they might be a little

worried. Considering that this is Grand Forks and it's fairly safe but it's all based on safety as far as I can tell.

Q You have diagnosed her with a major depressive order; is that correct?

A Yes.

Q And you contribute that primarily to the allegations of sexual abuse; is that correct?

A That's fair to say.

Q But for those allegations she would not have this depression problems?

A Mostly likely these other things were fairly normal. She would have an argument about the grounding. We would spend five minutes or so with her mom in there and we [**79]would talk about it. She would relax and then we would spend a large portion of the session talking about her feelings with regard to her dad. There would be issues with peers at school. We have talked about that.

The following week there were no issues with the peers. That's typical for a normal 14-year-old stuff. Boy, I hate being in Grand Forks. It's so cold here. There is not much to do here. I miss my friends. The schools are so much harder here. The kids at school don't like me and the next week she has five friends she's talking to. Those were from week to week. They would ebb and flow. Often it amounted to rejection by her peers one week and the next week school is fine. And, yes, I sat with so and so for lunch. There would be no problem. Those were kind of normal 14-year-old adjustment things.

Q Doctor, you saw her in June of 2002, last June; is that correct?

A Yes.

Q And these allegations you referred to the masturbation and the comment about the hips and boops allegedly took place the year prior?

A Her 8th grade summer.

Q And were you aware that she expressed anything about that prior to expressing it to you?

A Yes. Obviously she was sent to me my Social [**80]Services. They had already had the report. She told somebody else before she told me.

Q Do you know when she told them?

A You know, I did talk to the Social Worker about it. I didn't bring my notes. I have one note that I talked to Mrs. Knutson. June 7th I spoke to Tammy Knutson and she said she had investigated it and that Dorothy had made these allegations to her but I didn't write it down. I assumed it was around the same time. They made the recommendation that she go to counseling and they came to my office for counseling. I would assume it was within a few weeks.

Q I assume they came to you because visitation with father was going to occur.

A I understand Tammy Knutson recommended counseling that is what the mom said when they brought her in. She was brought in for counseling by mom. GFSS required individual counseling for Dorothy in regard to the

trauma issue. That was my understanding of what the timing was about.

Q And you were aware that report from Social Services was also sent to Texas?

A I sent it to Texas because Texas hadn't investigated. When I talked to Ms. Knutson, Texas had not been involved. I, as a mandated reporter, actually called Texas myself and tried to initiate something there as far as [**81]an investigation but I didn't get very far.

Q Did the parents ask you to call Texas?

A I asked, has this been reported in Texas? Tami said, not that I know of. I said, don't we have to tell then because they have to do their own. They have to investigate because the stuff occurred in their jurisdiction. Grand Forks can't investigate things that is out of the jurisdiction. When Tammy indicated she hadn't done so, as a mandated reporter, that very same day, I got on the phone to the National Child Abuse Hotline and found out the number for Bexar County and made an initial report. They didn't want to take the report because it had already been done up here and the child was no longer there. So, they actually told us to go through the police department in San Antonio.

Q And you reported this because you thought that commenting about hips and boops was sexual or masturbating or both?

A I reported it because I'm a mandated reporter and if I suspect that abuse has occurred and all of the suspicion then I'm required by law to make a report so they can investigate it to the agency. That is my responsibility. Since it occurred in Texas and had not been reported to them, if I

knew about something I have to report to them. It's federal law.

[**82]Q Isn't it correct that they were not in Texas. They were traveling in the upper midwest?

A Not according to her. There was stuff that happened in Texas that summer. They didn't file a report. I made the 960. I don't have all the details but I think I reported the sexual allegation and the negligence allegations with the conditions of the home.

Q The allegations with the sexual abuse, would in our opinion be that sexual abuse allegations, the comments about hips and boops?

A Yes, it is. In addition the masturbation in the presence of a 14-year-old; either one separate, I would have considered.

Q Isn't it correct that Dorothy indicated in the report, your report indicated that Dorothy had indicated that she stated that her father thought she was sleeping? Is it first on the June 6th report?

In your report, the report that Dorothy indicated to Social Services and to you at no time did she ever state that her father did this intentionally?

A They never said that she thought what his intent was. She had indicated to him that it was bothering her and he continued to do so but that came later.

Q But nothing in here indicates that he knew that masturbation was occurring in her presence while she was [**83]awake?

A I can't know what he knew or didn't know.

Q Isn't it correct Dorothy said that the masturbation always occurred -- when it occurred some twenty odd times, did it always occur when he thought she was sleeping?

A That is not necessarily what she told me initially. She indicated later she had let him know that it was going on and it was bothering her and he continued. So, then, I suppose, if she knew it was happening --

Q But that's not in our report, is it?

A The first day as I mentioned, she was somewhat hesitant to tell me things.

Q Assuming this masturbation happened, did Dorothy say she saw his penis to you? Did she ever tell you she saw his penis?

A No.

Q Did Dorothy ever tell you that she ever saw any type of semen of any type? Did she tell you what masturbation was?

A Yes.

Q Did she see anything happen? Did she see any type of semen?

A You know, I don't remember her saying that she saw that and I don't know if I asked her directly. I don't [**84]think she said that.

Q All this masturbation allegedly that she says happened, happened under the covers in his bed?

A Yes.

Q And she could see it because she could see the outline?

A Yes.

Q Shadows?

A That's what I understand.

Q And you feel she should be able to chose when and how she wants to talk with her father?

A Yes.

Q And when you stated that her stepparent or her mother and step-father are too strict, you don't think her parents have any control over Dorothy and what she wants to do?

A They have a lot of control over her movements.

Q Hypothethically, if Dorothy was to express favorable opinions about her father and was pumped by her parents and she was rewarded when she expressed hostility towards her father, would that influence her?

A Yes it could influence her.

Q Would that influence your opinion on whether Dorothy should be able to chose when she should see her father?

[**85]A It really wouldn't change. My interviews with her were primarily with her by herself in the room with a stipulation to her mother that everything she told me

was private and the only thing going to be disclosed to her mom and step-dad were going to be in her presence with her control over what was said; and the only exception, of course, are safety. I do this with all my clients. When they realize that is true, they tell you. So, she would tell me something that she was upset about with her mom and step-dad. She would wait and see if I said anything to them. I wouldn't unless I had her permission. I gave her voluntary disclosure. If it's brought up again and if it's important to her, let's have mom in the room, and let's talk about this concern. And she expressed concern with support from her and we dealt with the problems. Once that trust is established, you then get lots of disclosure from the child. Now, they're trusting you.

I believe she knows that she can tell me things that she loves her dad, that she misses her dad. She wishes she had a relationship with her dad, and that would never, ever leave my office. Okay. I also watched an interesting interaction with Mrs. Pinter, Dorothy and myself. Dorothy wanted to tell mom she didn't want to have any more phone calls. She was afraid that her mom would be upset with her if she did that. She was very careful. She asked me what to [**86]say. I don't want to talk to him anymore. I don't want to tell him that I don't want to talk to him because that hurts my feelings to tell my dad that. I don't want to talk to him and mom is very reluctant to say anything one way or the other. She was not saying Dorothy you don't have to talk to him. There was nothing like that ever. I got the impression from Dorothy that her mother had gone out of her way to not influence her one way or the other about phone calls anyway.

Q As you're aware, Mr. Litoff is here in the courtroom from Texas, and would you have a problem with him taking his daughter out to dinner tonight, just the two of them.

MS. JENSEN: I would object to the form of the question. Would the doctor have a problem. The question is who she advised based upon Dorothy.

MR. OMDAHL: I asked the question. I think it's a fair question and I would like her to answer.

THE COURT: Do you think there is a problem with Dorothy from what you observed?

THE WITNESS: Would she have a problem with that?

THE COURT: Yes. You can go ahead an answer.

THE WITNESS: She might be willing to if it were a public place and there were people around. She might be willing. It seems like that's what they did during the [**87]time they were on vacation.

Q (Continuing Mr. Omdahl) How many visits have you had with Dorothy since June? Do you have a ballpark?

A I think it's fifteen as of this week.

Q Fifteen visits?

A Yes.

Q And how long are the visits?

A Fifty minutes to an hour.

MR. OMDAHL: I have no further questions.

THE COURT: Ms. Jensen.

MS. JENSEN: I have a couple.

**RE-DIRECT EXAMINATION BY MS. JENSEN:**

Q Getting back to Mr. Omdahl's question, would you have a problem with Dorothy having dinner tonight in an unsupervised setting? Do you think if that request is made from the prospective of what is best for Dorothy, that she should be forced to do that?

A No.

MS. JENSEN: Thank you. That's all I have, Your Honor.

THE COURT: Thank you, Dr. Simun. You may step down.

**(Witness excused)**

THE COURT: Before we go on, I think, we need [**88]a little break perhaps. So, let's take about a ten or fifteen minute break and then we'll come back and do you want to go back again to the testimony of Mrs. Pinter?

MR. OMDAHL: I would assume so.

MS. JENSEN: Maybe we could talk.

THE COURT: You didn't have any other witnesses that had to be here at a special time?

MS. JENSEN: Tammy Knutson. She's under subpoena. She's on standby. She will be here whenever we need her.

THE COURT: All right.

MS. JENSEN: I have Defendant's Exhibit No. 1 which is a group of photographs depicting the condition of Mr. Litoff's home and I'm not sure if Mr. Omdahl has any objection.

MR. OMDAHL: I do. I would object to its relevancy and it doesn't have anything to do with supervised visitation. I object. It has already been presented in Texas and they have already addressed his home in Texas. The Judge has already ruled on those pictures. They are two or three years old. I object to that on those grounds.

MS. JENSEN: Your Honor, I would ask that what the Court could do, assuming you'll have an interview with Dorothy. If this is actually going to occur, the foundation for those photographs would actually come through her, and I [**89]would ask that the Court then reserve a ruling.

THE COURT: Were these same pictures introduced in the Texas proceeding?

MS. JENSEN: I believe they were at one time. The Judge ruled that he had to clean up his house.

MR. OMDAHL: He's complied with that Judge's ruling.

THE COURT: As I understand the testimony under which this was covered, Mrs. Pinter was concerned -- the other concerns that she had were pertaining to the living conditions.

MS. JENSEN: That's correct, Your Honor.

THE COURT: Well, what I'm going to do, I will admit these conditionally. I think perhaps I need to have some further foundation as to when these were taken and

whether they represent some sort of current depiction. Whether they're a fair and accurate depiction of his present living condition, if they're not and perhaps only Mr. Litoff could testify to that then I won't admit them. If they are, if they represent current conditions I will admit them.

MS. JENSEN: Thank you, Your Honor.

THE COURT: With that, we'll take a ten minutes recess or so. Then we'll reconvene with more testimony by Mrs. Pinter.

So, the Court is in recess.

NO. 89-CI-05856

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| IN THE INTEREST OF | § | IN THE DISTRICT COURT |
| DOROTHY ELAINE LITOFF | § | 285TH JUDICIAL DISTRICT |
| A CHILD | § | BEXAR COUNTY, TEXAS |

**ORDER FOR ENFORCEMENT**

On September 7, 1999, the Court heard Movant's Motion for Enforcement.

Appearances

Movant, ROBERT S. LITOFF, appeared in person and by attorney.

Respondent, HELEN PASAOL PINTER, appeared in person.

Proceedings

All matters of law and of fact were submitted to the Court, and the Court heard the evidence and considered the pleadings and argument of counsel.

Jurisdiction

The court finds that it has jurisdiction over the subject matter and the parties in this cause.

Record

A record of the proceedings was made by Lyndon Gaskey.

Findings

The court finds that Respondent is guilty of separate violations of the order signed August 21,1990, that appears in the minutes of this Court and states in relevant part as follows:

> "....(B) Mutual Agreement on Specified Terms For Possession
>
> IT IS ORDERED AND DECREED that ROBERT STANLEY LITOFF, shall have possession of the child at all times as the parties may mutually agree, and, failing mutual agreement, as follows:
>
> (C) Parents Who Reside 100 Miles or Less Apart. Except as otherwise explicitly provided if ROBERT STANLEY LITOFF resides 100 miles or less from primary residence of the child, ROBERT STANLEY LITOFF shall have the right to possession of the child as follows:
>
> (1) on weekends from 5:30 p.m. on the second, fourth, and fifth Friday of each month until 5:30 p.m. on the following Sunday.

(2) on Thursday of each week following a visitation weekend and a Tuesday of each week following a non-visitation weekend, from 5:30 p.m. until 8:30 p.m.

(3) Weekend Possession Extended by Holiday. Except as otherwise explicitly provided, if a weekend period of possession of ROBERT STANLEY LITOFF coincides with a school holiday during the regular school term, or with a federal, state, or local holiday during the summer months in which school is not in session, the weekend possession shall extend until 5:30 p.m. on a Monday holiday or school holiday or shall begin at 5:30 p.m. Thursday for a Friday holiday or school holiday, as applicable.

(4) Vacations and Holidays.-The following provisions govern possession of the child for vacations and for certain specific holidays and supersede any conflicting weekend or Tuesday and Thursday periods of possession provided by Subsections (1) and (2) above. ROBERT STANLEY LITOFF and HELEN PASAOL LITOFF shall have rights of possession of the child as follows:

(a) ROBERT STANLEY LITOFF shall have possession of the child in even-numbered years from 5:30 p.m. on the last school day before the Christmas school vacation begins until noon on December 26th, and HELEN PASAOL LITOFF shall have possession for the same period in odd-numbered years;

(b) ROBERT STANLEY LITOFF shall have possession of the child in odd-numbered years from noon on December 26th until 5:30 p.m. on the day before school resumes, and HELEN PASAOL LITOFF shall have possession for the same period in even-numbered years;

(c) ROBERT STANLEY LITOFF shall have possession of the child in odd-numbered years from 5:30 p.m. on the Wednesday before Thanksgiving until 5:30 p.m. on the following Sunday, and HELEN PASAOL LITOFF shall have possession for the same period in even-numbered years;

(d) ROBERT STANLEY LITOFF shall have possession of the child in even-numbered years from 5:30 p.m. on the last school day before the school spring vacation begins until 5:30 p.m. on the day before school resumes, and HELEN PASAOL LITOFF shall have possession for the same period in odd-numbered years.

(e) if ROBERT STANLEY LITOFF:

(1) gives HELEN PASAOL LITOFF 30 days written notice each year specifying an extended period or periods of summer possession, ROBERT STANLEY LITOFF shall have possession of the child for 30 days between June 1 and August 31 to be exercised in no more than two separate periods of at least seven consecutive days each; or

(2) does not give HELEN PASAOL LITOFF written notice by May 1 of each year specifying an extended period or periods of summer possession, ROBERT STANLEY LITOFF shall have possession of .the child, for 30 consecutive days beginning at 5:30 p.m. on July l and ending at 5:30 p.m. on July 31;

(f) if HELEN PASAOL LITOFF gives ROBERT STANLEY LITOFF written notice by May 15 of each year or gives ROBERT STANLEY LITOFF 14 days written notice on or after May 16 of each year, HELEN PASAOL LITOFF shall have possession of the child on any one weekend from Friday at 5:30 p.m. to 5:30 p.m. on the following Sunday during any one period of possession by the ROBERT STANLEY LITOFF under Subdivision (e) of this subsection, provided that HELEN PASAOL LITOFF picks up the child from ROBERT STANLEY LITOFF and returns the child to that same place;

(g) if HELEN PASAOL LITOFF give ROBERT STANLEY LITOFF written notice by May 15 of each year or gives ROBERT STANLEY LITOFF 14 days written notice on or after May 16 of each year, then HELEN PASAOL LITOFF may designate one weekend between June 2 and August 31, during which an otherwise scheduled weekend period of possession by ROBERT STANLEY LITOFF will not take place, provided that the weekend so designated does not interfere with ROBERT STANLEY LITOFF's period or periods of extended summer possession.

(h) the parent not in possession of a child on the child's birthday shall have possession of the child from 5:30 p.m. to 8 p.m. on that day, provided that the parent not in possession picks up the child from the child's residence and returns the child to that same place.

(i) The father shall have possession of the child on Father's Day from 10:00 a.m. to 7:00 p.m., provided, that if he is not in possession of the child, he picks up the child from the child's residence and returns the child to that same place; and

(j) The mother shall have possession of the child on Mother's Day from 10:00 a.m. to 7:00 p.m., provided that, if she is not in possession of the child, she picks up the child from the child's residence and returns the child to that same place...."

".....(e) General Terms and Conditions. Except as otherwise explicitly provided, terms and conditions of possession of a child that apply irrespective of the distance between the residence of a parent and the child are as follows:

(1) HELEN PASAOL LITOFF shall surrender the child to ROBERT STANLEY LITOFF at the beginning of each period of ROBERT STANLEY LITOFF's possession at the residence of HELEN PASAOL LITOFF....."

"…..Execution of Documents

IT IS ORDERED. AND DECREED that each party will on demand execute and/or deliver to the other party any deeds or other documents, title documents, tax statements, insurance policies, etc., and do or cause to be done any other acts or things that may be necessary or desirable to effect a division of the estate of the parties and the provisions of this Decree….."

"…..The parties agree and it is therefore ORDERED that Robert Stanley Litoff shall have the right to claim the child Dorothy Elaine Litoff as a dependent for the purpose of Federal Income Taxes for the year 1990 and all future years so long as no arrearage in child support exists as of December 31st for the tax year.

Helen Pasaol Litoff is ORDERED to execute IRS form 8332, or any subsequent forms provided by the IRS for waiver of dependent exemption, on or before January 31st of each year as long as no child support arrearage exists on that date….."

The court further finds that Respondent has failed to comply with the provisions of the order as follows:

Violation #1: On May 23, 1997, Helen P. Pinter failed to surrender the child to Robert S. Litoff at 5:30 p.m. at her residence that resulted in the denial of Movant's weekend visitation period of May 23, 1997 through 5:30 p.m. on May 26, 1997 (Memorial Day).

Violation #2: On June 10, 1997, Helen P. Pinter failed to surrender the child to Robert S. Litoff at 5:30 p.m. at her residence.

Violation #3: On June 13, 1997, Helen P. Pinter failed to surrender the child to Robert S. Litoff at 5:30 p.m. at her residence that resulted in the denial of Movant's weekend visitation period of June 13, 1997 through 5:30 p.m. on June 15, 1997.

Violation #4: On June 2, 1997, Helen P. Pinter failed to surrender the child to Robert S. Litoff at 5:30 p.m. at her residence that resulted in the denial, of Movant' s Thursday visitation.

Violation #5: On May 28, 1999, Helen P. Pinter failed to surrender the child to Robert S. Litoff at 5:30 p.m. at her residence that resulted in the denial of Movant's weekend visitation period of May 28, 1999, through 5:30 p.m. on May 31, 1999 (Memorial Day).

Violation #6: On June 3,1999, Helen P. Pinter failed to surender the child to Robert S. Litoff at 5:30 p.m. at her residence.

Violation #7: On June 8,1999, Helen P. Pinter failed to surrender the child to Robert S. Litoff at 5:30 p.m. at her residence.

Violation #8: On June 11, 1999, Helen P. Pinter failed to surrender the child to. Robert S. Litoff at 5:30 p.m. at her residence that resulted in the denial of Movant's weekend visitation period of June 11, 1999, through 5:30 p.m. on June 13, 1999.

Violation#9: On or before January 31, 1999, Helen P. Pinter failed to execute and deliver IRS form 8332 to Robert S. Litoff.

The Court specifically finds that Respondent is in contempt for each separate violation enumerated above.

The Court further finds that Movant does not seek hearing incarceration of Respondent as a remedy for violation of the Court's orders.

The Court further finds that reasonable attorney's fees and costs in the amount of $500.00 should be assessed against Respondent

Relief Granted

IT IS ADJUDGED that Respondent, HELEN PASAOL PINTER, is in contempt of this Court for each separate violation enumerated above.

IT IS ORDERED that Movant be granted make up of lost visitation as follows:

1. On Saturday, September 18, 1999, between the hours of 9:00 a.m. and 6:00 p.m.;

2. On Saturday, October 2, 1999, between the hours of 9:00 a.m. and 6:00 p.m.;

3. On Saturday, November 6, 1999, between the hours of 9:00 a.m. and 6:00 p.m.

The visitation periods are in addition to the visitation as previously ordered in the Agreed Decree of Annulment and Decree In Suit Affecting the Parent-Child Relationship signed and entered on August 21, 1990, which remain in full force and effect.

Respondent, HELEN PASAOL PINTER is ORDERED to surrender the child, Dorothy Elaine Litoff, to Movant, ROBERT S. LITOFF, at her residence at the beginning of the above ordered periods of additional visitation.

Movant, ROBERT S. LITOFF is ORDERED to return the child to the residence of HELEN PASAOL PINTER at the end of said periods of visitation.

IT IS FURTHER ORDERED that HELEN PASAOL PINTER pay to ROBERT S. LITOFF the sum of $500.00 as attorney's fees by October 7, 1999.

IT IS ORDERED that the parties obtain counseling with Robin Walton to and communication between the parties. The costs of counseling is to be divided equally between the parties.

SIGNED on 9/30/99 .

/s/
JUDGE PRESIDING

* CIVIL ** ** UNIFIED COURT INFORMATION SYSTEM **
1/18/04 ** CASE PROFILE ** KCI100

CASE # 18-02-C-01352/001

LITOFF, ROBERT STANLEY VS. PINTER, HELEN

ACTION TYPE : FOREIGN JUDGMENT
COURT : DISTRICT
CURRENT STATUS : 420 NOTICE OF APPEAL
JUDGE ASSIGNED : BRUCE E. BOHLMAN

DATE FILED : 10-23-02
DATE CLOSED : 10-28-04

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| INTERESTED PARTIES | CITY/STATE | DOB |
|---|---|---|
| AD 001 JENSEN, PATTI J. | EAST GRAND FORKS, MN | |
| AP 001 OMDAHL, THOMAS V. | GRAND FORKS ND | |
| DE 001 PINTER, HELEN | GRAND FORKS AFB, ND | |
| PL 001 LITOFF, ROBERT STANLEY | SAN ANTONIO TEXAS | |

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CURRENT EVENTS APPEAL DUE DEC. 13, 2004 (RITA OR COLLEEN ) (RS)
DATE & TIME 12-22-04
PLACE GRAND FORKS
ENTERED 11-18-04

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RECEIPT # 223730
DATE 10-22-02

| | |
|---|---|
| TIME | 12:43 |
| CHECK # | |
| REMITTER | PINTER (D) |
| DISTRIB | 10.00 |
| VD | |
| TYPE | MISC. |

| | |
|---|---|
| RECEIPT # | 22556 |
| DATE | 11-27-02 |
| TIME | 10:43 |
| CHECK # | 7885 |
| REMITTER | OMDAHL (D) |
| DISTRIB | 30.00 |
| VD | |
| TYPE | CASH |

| | |
|---|---|
| RECEIPT # | 234892 |
| DATE | 5-13-03 |
| TIME | 14:17 |
| CHECK # | 5933 |
| REMITTER | GALSTAD (D) |
| DISTRIB | 10.00 |
| VD | |
| TYPE | CASH |

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|---|---|---|
| JUDGMENT FOR: | PINTER, HELEN | |
| AMOUNT | : | 2000.00 |
| FILED | : | 5-13-03 |
| JUDGE # | : | 2929 BRUCE E. BOHLMAN |
| SATISFIED | : | |
| AMOUNT | : | |
| DKT DT. &TIME | : | 5-13-03 14:27 |

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|---|---|---|
| AGAINST: | LITOFF, ROBERT STANLEY | |
| RE-DKT DATE&TIME: | | |
| DAMAGES | : | 2000.00 |
| INTEREST | : | |

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|---|---|---|
| COST | : | |
| ATTY FEE | : | |
| COUNTY | : | |
| | | |
| JUDGMENT FOR | : | PINTER, HELEN |
| AMOUNT | : | 3608.09 |
| FILED | : | 2-23-04 |
| JUDGE # | : | 2929 BRUCE E. BOHLMAN |
| SAFISFIED | : | |
| AMOUNT | : | |
| DKT DATE &TIME | : | 2-23-04 14:35 |

AGAINST: LITOFF, ROBERT STANLEY
RE-DKT DATE&TIME:

| | | |
|---|---|---|
| DAMAGES | : | |
| INTEREST | : | |
| COST | : | 3608.09 |
| ATTY FEE | : | |
| COUNTY | : | |

| DOC # | HISTORY EVENTS | DATE & TIME | JUDGE NAME | ENTERED |
|---|---|---|---|---|
| 1 | CC OF DOCKET SHEET (PREVIOUS FILINGS ARE ATTACHED AND WERE FILED IN BEXAR COUNTY, TEXAS) | | | 10-23-02 |
| 2 | CC OF AGREED DECREE OF ANNULMENT AND DECREE INSUIT AFFECTING PARENT-CHILD | | | 10-23-02 |

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|---|---|---|---|---|
| | RELATIONSHIP MOT TO ENFORCE VISITATION (R-ATTYS) | 12-12-02 2:00 | BRUCE E. BOHLMAN | 11-04-02 |
| 3 | NOTICE OF MOTION AND MOTION FOR VISITATION | | | 11-27-02 |
| 4 | AFFIDAVIT OF ROBERT STANLEY LITOFF | | | 11-27-02 |
| | BKUP MOT TO ENFORCE VISIT | 1-16-03 9:00 | BRUCE E. BOHLMAN | 12-05-02 |
| 5 | BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR VISITATION | | | 12-30-02 |
| 6 | RESPONSE TO MOTION TO ESTABLISH VISITATION | | | 12-30-02 |
| 7 | AFFIDAVIT OF SERVICE BY FACSIMILE TRANSMISSION | | | 12-30-02 |
| 8 | SUBPOENA DUCES TECUM | | | 1-07-03 |
| 9 | RESPONSE TO MOTION TO ESTABLISH VISITATION | | | 1-13-03 |
| 10 | BRIEF IN OPPOSITION TO | | | 1-13-03 |

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| | PLAINTIFF'S MOTION FOR VISITATION | | | |
| 11 | AFFIDAVIT OF SERVICE BY FACSIMILE TRANSMISSION | | | 1-13-03 |
| 12 | COPY OF PSYCHOLOGICAL EVALUATION | | | 1-15-03 |
| 13 | AFFIDAVIT OF DR. ANN SIMUN | | | 1-15-03 |
| 14 | AFFIDAVIT OF SERVICE BY FACSIMILE TRANSMISSION | | | 1-15-03 |
| 15 | AFFIDAVIT OF HELEN PINTER | | | 1-15-03 |
| 16 | AFFIDAVIT OF SERVICE BY FACSIMILE TRANSMISSION | | | 1-15-03 |
| | MOT TO ENF VISIT CONT FR 01-16 | 1-17-03 9:00 | BRUCE E. BOHLMAN | 1-16-03 |
| 17 | PSYCHOLOGICAL EVALUATION | | | 1-16-03 |
| | HEARING ENDED/UA/BRIEFDUE 1/31/03 | | BRUCE E. BOHLMAN | 1-17-03 |
| 18 | SHORTHAND NOTES NK JAN. 16, 03 MOTION (2) | | | 1-22-03 |
| 19 | DEFENDANT'S SUMMATION | | | 1-22-03 |

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| 20 | AFFIDAVIT OF JEANNE PETERSON | | 1-22-03 |
| 21 | AFFIDAVIT OF SERVICE BY MAIL | | 1-22-03 |
| 22 | PLAINTIFF'S SUMMATION | | 2-07-03 |
| | ORDER/ENFORCE VISITATION | BRUCE E. BOHLMAN | 2-21-03 |
| 23 | DEFT'S EXH. #1-15 PHOTOS | | 2-21-03 |
| 24 | DEFT'S EXH. #2-COPY LETTER/ENVELOPE | | 2-21-03 |
| 25 | PLT'S EXH. #3-PSYCHOLOGICAL EVALUATION - ROBERT LITOFF | | 2-21-03 |
| 26 | DEFT'S EXH. #4-VITAE - ANN SIMUN | | 2-21-03 |
| 27 | PLT'S EXH. #5-TAAS SCORES | | 2-21-03 |
| 28 | PLT'S EXH. #6-LETTER 6/8/90 LETTER FROM DEPT OF HUMAN SERVICE | | 2-21-03 |
| 29 | PLT'S EXH. #7-INTAKE REPORT 7/27/00 | | 2-21-03 |
| 30 | PLT'S EXH. #8-INTAKE REPORT 8/4/00 | | 2-21-03 |

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| 31 | PLT'S EXH. #9-BEXAR COUNTY TEXAS DOCUMENTS (ORDERS) | | | 2-21-03 |
| 32 | DEFT'S EXH. #10-CHILD PROTECTION SERVICE ASSESSMENT REPORT-8/31/01 | | | 2-21-03 |
| 33 | DEFT'S EXH. #11-PHOTOS (8) | | | 2-21-03 |
| 34 | PLT'S EXH. #12-YOUNG GIRLS | | | 2-21-03 |
| 35 | DEFT'S EXH. #13-COPY DEPT OF HUMAN SERVICES RECOMMENDED ORDER | | | 2-21-03 – |
| 36 | PLT'S EXH. #14-LETTER TO ROBERT | | | 2-21-03 |
| 37 | GRAND FORK PUBLIC SCHOOLS REPORT CARDS | | | 2-21-03 |
| 38 | GROUP TEST RESULTS | | | 2-21-03 |
| 39 | STUDENT REPORT | | | 2-21-03 |
| 40 | MEMORANDUM DECISION & ORDER | | | 2-21-03 |
| | CHECK FOR PAPERS RS | 3-31-03 | BRUCE E. BOHLMAN | 3-05-03 |

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| 41 | NOTICE OF ENTRY OF MEMORANDUM DECISION AND ORDER | | | 3-06-03 |
| 42 | AFFIDAVIT OF SERVICE BY MAIL | | | 3-06-03 |
| | APPEAL DUE (RITA OR COLLEEN) | 4-11-03 | BRUCE E. BOHLMAN | 3-19-03 |
| | NOTICE OF APPEAL | | BRUCE E. BOHLMAN | 3-19-03 |
| 43 | NOTICE OF APPEAL | | | 3-19-03 |
| 44 | AFFIDAVIT REGARDING BOND | | | 3-19-03 |
| 45 | ORDER FOR TRANSCRIPT | | | 3-19-03 |
| 46 | CERTIFICATE OF SERVICE | | | 3-19-03 |
| 47 | REQUEST TO HOLD FILE | | | 3-27-03 |
| | MEMO & ORDER ENTERED | | BRUCE E. BOHLMAN | 4-03-03 |
| | CLERK'S CERTIFICATE OF RECORD | | BRUCE E. BOHLMAN | 5-05-03 |
| | CLERKS CERTIFICATE OF RECORD | | BRUCE E. BOHL | 5-13-03 |

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| | "CLOSED CASE" | 5-13-03 | MAN BRUCE E. BOHLMAN | 5-13-03 |
| 48 | ORDER FOR AMENDED JUDGMENT | | | 5-13-03 |
| 49 | AMENDED JUDGMENT | | | 5-13-03 |
| 50 | NOTICE OF ENTRY OF AMENDED JUDGMENT | | | 5-23-03 |
| 51 | AFFIDAVIT OF SERVICE BY MAIL | | | 5-23-03 |
| 52 | ACKNOWLEDGEMENT OF DIRECT RECEIPT OF CHILD SUPPORT | | | 6-20-03 |
| 53 | VERIFICATION OF PAYMENT WITH ATTACHMENTS | | | 7-10-03 |
| 54 | NOTICE OF DIRECT PAYMENT APPROVAL | | | 7-10-03 |
| 55 | TRANSCRIPT - APPEAL | | | 12-11-03 |
| 56 | SUPREME COURT OPINION | | | 12-11-03 |
| 57 | CC SUPREME COURT JUDGMENT | | | 12-11-03 |
| | MOT FOR AWARD OF ATTY FEES ON APPEAL (LM) | 1-20-04 2:00 | BRUCE E. BOHL | 12-15-03 |

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| | "REOPENED" | MAN BRUCE E. BOHLMAN | 12-15-03 |
| 58 | AFFIDAVIT OF JEANNE PETERSON | | 12-15-03 |
| 59 | BRIEF IN SUPPORT OF MOTION | | 12-15-03 |
| 60 | MOTION FOR AWARD OF ATTORNEY'S FEES ON APPEAL | | 12-15-03 |
| 61 | AFFIDAVIT OF SERVICE BY MAIL | | 12-15-03 |
| 62 | NOTICE OF HEARING ON MOTION FOR AWARD OF ATTORNEY'S FEES ON APPEAL | | 12-17-03 |
| 63 | AFFIDAVIT OF SERVICE BY MAIL | | 12-17-03 |
| 64 | FINANCIAL AFFIDAVIT (DEF) | | 12-23-03 |
| 65 | AFFIDAVIT OF SERVICE BY MAIL | | 12-23-03 |
| 66 | NOTICE OF MOTION AND MOTION FOR VISITATION | | 1-06-04 |
| 67 | AFFIDAVIT OF ROBERT STANLEY LITOFF | | 1-06-04 |
| 68 | BRIEF IN | | 1-09-04 |

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| | SUPPORT OF MOTION TO MODIFY VISITATION | | |
| 69 | AFFIDAVIT OF ROBERT STANLEY LITOFF (WITH ATTACHMENTS) | | 1-21-04 |
| 70 | BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR VISITATION | | 1-21-04 |
| 71 | AFFIDAVIT OF SERVICE BY MAIL | | 1-21-04 |
| 72 | STENO NOTES NK MOTION HEARING OF 1.26.04 | | 1-23-04 |
| | ORDER - ATTY'S FEE & VISITATION | BRUCE E. BOHLMAN | 2-12-04 |
| 73 | ORDER ALLOWING MOTION FOR ATTORNEY'S FEES & ORDER DENYING MOTION FOR VISITATION | | 2-12-04 |
| 74 | NOTICE OF ENTRY OF ORDER ALLOWING MOTION FOR ATTORNEY'S FEES AND ORDER | | 2-17-04 |

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| | DENYING MOTION FOR VISITATION | | | |
| 75 | AFFIDAVIT OF SERVICE BY MAIL "CLOSED CASE" | 2-23-04 | BRUCE E. BOHLMAN | 2-23-04 |
| | JUDGMENT/ORDER ENTERED | | BRUCE E. BOHLMAN | 2-23-04 |
| 76 | AFFIDAVIT OF IDENTIFICATION | | | 2-23-04 |
| 77 | MONEY JUDGMENT | | | 2-23-04 |
| 78 | CONFIDENTIAL ENVELOPE - TESTIMONY OF DOROTHY LITOFF | | | 2-25-04 |
| 79 | NOTICE OF ENTRY OF MONEY JUDGMENT | | | 3-05-04 |
| 80 | AFFIDAVIT OF SERVICE BY MAIL | | | 3-05-04 |
| 81 | DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO MODIFY JUDGMENT TO INSERT LANGUAGE REGARDING PARENTAL | | | 3-31-04 |

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| | RIGHTS | | | |
| 82 | AFFIDAVIT OF SERVICE BY MAIL | | | 3-31-04 |
| | "REOPENED" | | BRUCE E. BOHLMAN | 4-01-04 |
| | CK. TO SEE IF AMD JUDG HAD BEEN ENTERED (RS) | 5-07-04 | BRUCE E. BOHLMAN | 4-07-04 |
| 83 | NOTICE OF MOTION AND MOTION AND BRIEF FOR VISITATION RIGHTS, CERTIFICATE OF SERVICE | | | 4-07-04 |
| 84 | PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ESTABLISHING AN AWARD OR ATTORNEY'S FEES FOLLOWING REMAND | | | 4-07-04 |
| 85 | AFFIDAVIT OF SERVICE BY MAIL | | | 4-07-04 |
| 86 | MEMORANDUM DECISION & ORDER | | | 4-07-04 |
| 87 | NOTICE OF ENTRY OF | | | 4-14-04 |

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| | MEMORANDUM DECISION & ORDER | | | |
| 88 | AFFIDAVIT OF SERVICE BY MAIL | | | 4-14-04 |
| | CALLED OMDAHL-STATED WOULD BE IN NEXT FRI | 5-07-04 | BRUCE E. BOHLMAN | 5-07-04 |
| | CK FOR AMED JUDGMENT (CRS) | 5-21-04 | BRUCE E. BOHLMAN | 5-07-04 |
| | AMENDED JUDGMENTR (SECOND) | | BRUCE E. BOHLMAN | 5-21-04 |
| | "CLOSED CASE" | 5-21-04 | BRUCE E. BOHLMAN | 5-21-04 |
| 89 | SECOND AMENDED JUDGMENT | | | 5-21-04 |
| 90 | NOTICE OF ENTRY OF SECOND AMENDED JUDGMENT | | | 6-01-04 |
| 91 | AFFIDAVIT OF SERVICE BY MAIL | | | 6-01-04 |
| | "REOPENED" | | BRUCE E. BOHLMAN | 6-16-04 |
| | ORDER TO SHOW CAUSE (LM) | 8-10-04 2:30 | BRUCE E. | 6-16-04 |

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| | | | BOHL MAN | |
| 92 | APPLICATION FOR AN ORDER TO SHOW CAUSE | | | 6-21-04 |
| 93 | ORDER FOR HEARING | | | 6-21-04 |
| 94 | AFFIDAVIT OF MAILING | | | 6-21-04 |
| 95 | NOTICE OF MOTION ND RULES OF COURT 3.2 | | | 8-30-04 |
| 96 | MOTION TO REINSTATE UNSUPERVISED VISITATION RIGHTS AND EVEIDENTIARY HEARING | | | 8-30-04 |
| 97 | MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO REINSTATE UNSUPERVISED VISITATION | | | 8-30-04 |
| | MOTION TO REINSTATE UNSUPERVISED VISITATION (JS) | | BRUCE E. BOHLMAN | 9-08-04 |
| | PULL MOT TO REINSTATE UNSUPER VIS FOR EZ/BEB JS | 9-15-04 | BRUCE E. BOHLMAN | 9-08-04 |
| | HAS BEB RULES ON MOT TO | 10-15-04 | BRUCE E. | 9-08-04 |

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| | REINSTATE UNSUP VISITATION JS ORDER - OSC | | BOHL MAN | |
| | | | BRUCE E. BOHL MAN | 9-10-04 |
| 98 | LETTER BRIEF | | | 9-10-04 |
| 99 | MEMORANDUM DECISION & ORDER | | | 9-10-04 |
| 100 | AFFIDAVIT OF PATTI J. JENSEN | | | 9-10-04 |
| 101 | AFFIDAVIT OF SERVICE BY MAIL | | | 9-10-04 |
| 102 | LETTER CORRECTION FROM BRUCE FEIN | | | 9-15-04 |
| 103 | NOTICE OF ENTRY OF ORDER | | | 9-16-04 |
| 104 | AFFIDAVIT OF MAILING | | | 9-16-04 |
| | MOTION TO WITHDRAW AS COUNSEL (LT) | | BRUCE E. BOHL MAN | 10-05-04 |
| | PULL FOR BEB/MOTION TO WITHDRAW COUNSEL (LT) | 10-08-04 | BRUCE E. BOHL MAN | 10-05-04 |
| | SEE IF ORDER WITHDRAW COUNSEL SIGNED (LT) | 11-09-04 | BRUCE E. BOHL MAN | 10-05-04 |
| 105 | MOTION ALLOWING | | | 10-05-04 |

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| | WITHDRAW OF COUNSEL | | | |
| 106 | NOTICE OF MOTION TO WITHDRAW COUNSEL | | | 10-05-04 |
| 107 | AFFIDAVIT OF COUNSEL | | | 10-05-04 |
| 108 | BRIEF IN SUPPORT OF WITHDRAW OF COUNSEL | | | 10-05-04 |
| 109 | AFFIDAVIT OF SERVICE BY MAIL | | | 10-05-04 |
| 110 | AFFIDAVIT OF SERVICE BY FACSIMILE TRANSMISSION | | | 10-05-04 |
| | MOTION FOR DEFAULT (LT) | | BRUCE E. BOHLMAN | 10-12-04 |
| | SEND FILE TO KKB FOR REVIEW OF DEFAULT MOTION (LT) | 10-25-04 | BRUCE E. BOHLMAN | 10-12-04 |
| 111 | MOTION FOR DEFAULT JUDGMENT | | | 10-12-04 |
| 112 | NOTICE OF MOTION | | | 10-12-04 |
| | ORDER DENIED UNSUP. VIS. | | BRUCE E. BOHLMAN | 10-28-04 |
| | ORDER GRANTING | | BRUCE E. | 10-28-04 |

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| | WITHDRWAL OF COUNSEL | BOHLMAN | |
| 113 | ORDER ALLOWING WITHDRAW OF COUNSEL | | 10-28-04 |
| 114 | ORDER DENYING MOTION FOR REINSTATING UNSUPERVISED VISITATION | | 10-28-04 |
| | NOTICE OF APPEAL | BRUCE E. BOHLMAN | 11-18-04 |
| 115 | NOTICE OF APPEAL | | 11-18-04 |

# NORTHSIDE INDEPENDENT SCHOOL DISTRICT
## CUMULATIVE RECORDS GRADES PK - 5

LITOFF DOROTHY GIRL ID: 111436082
SSAN: 639163211
DOB: 07/30/88 5100 LOOP 410 NW 2403
SAN ANTONIO TX 78229 680-4457

| Date Entered | Date Withdrawn | School |
|---|---|---|
| 8-24-93 | | Linton |
| | 8-8-94 | Hall |
| | | |
| | | |
| | | |

Father Robert Litoff
Mother or Guardian Helen Harris

| Teacher's Name | | | | | | |
|---|---|---|---|---|---|---|
| Year / Grade | K | 1 | 2 | 3 | 4 | 5 |
| Mathematics | E | E | 93 | 94 | 91 | 91 |
| Reading | E | E | 91 | 92 | 85 | 93 |
| Language | E | 97 | 96 | 94 | 93 | |
| Spelling | S | — | — | | | |
| Language Arts Average | E | 94 | 94 | 91 | 93 | |
| Social Studies | S | 93 | 92 | 95 | 88 | |
| Science | S | 94 | 92 | 92 | 99 | |
| Health | S | S | S | S | S | |
| Handwriting | S | S | S | S | S | |
| Art | S | S | S | S | S | |
| Music | S | S | S | S | S | |
| Physical Education | S | S | S | S | S | |
| English Language Development | S | | | | | |
| Promoted / Placed / Retained | | | | | | |

90 - 100 Excellent
80 - 89 Above Average
75 - 79 Average
70 - 74 Below Average
0 - 69 Failing

E - Excellent
S - Satisfactory
N - Needs Improvement
U - Unsatisfactory

NORTHSIDE ELEMENTARY ATTENDANCE RECORD

LITOFF (NAME LAST) DOROTHY (FIRST) (M.I.) 639163211 (SSAN) 131 436082 (STUDENT ID)

| PRESENT | ABSENT | ENTRY DATE | WITHDRAWAL DATE | GRADE | YEAR | TIMES |
|---|---|---|---|---|---|---|
| 165 | 9 | 08/24/93 | | KG | 93-94 | |

NORTHSIDE ELEMENTARY ATTENDANCE RECORD

LITOFF (NAME LAST) DOROTHY (FIRST) (M.I.) 639163211 (SSAN) 131 436082 (STUDENT ID)

| PRESENT | ABSENT | ENTRY DATE | WITHDRAWAL DATE | GRADE | YEAR | TIMES |
|---|---|---|---|---|---|---|
| 167 | 7 | 08/15/94 | | 01 | 94-95 | |

NORTHSIDE ELEMENTARY ATTENDANCE RECORD

LITOFF (NAME LAST) DOROTHY (FIRST) (M.I.) 639163211 (SSAN) 131 436082 (STUDENT ID)

| PRESENT | ABSENT | ENTRY DATE | WITHDRAWAL DATE | GRADE | YEAR | TIMES |
|---|---|---|---|---|---|---|
| 169 | 6 | 08/14/95 | | 02 | 95-96 | |

NORTHSIDE ELEMENTARY ATTENDANCE RECORD

LITOFF (NAME LAST) DOROTHY (FIRST) (M.I.) 639163211 (SSAN) 111 436082 (STUDENT ID)

| PRESENT | ABSENT | ENTRY DATE | WITHDRAWAL DATE | GRADE | YEAR | TIMES |
|---|---|---|---|---|---|---|
| 176 | 0 | 08/13/97 | | 03 | 97-98 | |

NORTHSIDE ELEMENTARY ATTENDANCE RECORD

LITOFF (NAME LAST) DOROTHY (FIRST) (M.I.) 639163211 (SSAN) 111 436082 (STUDENT ID)

| PRESENT | ABSENT | ENTRY DATE | WITHDRAWAL DATE | GRADE | YEAR | TIMES |
|---|---|---|---|---|---|---|
| 168 | 9 | 08/11/98 | | 05 | 98-99 | |

HEALTH RECORD — Color Eyes: Br. — Color Hair: Br.

| Date | Hearing R | Hearing L | Physical Hgt. | Physical Wgt. | Physical Disabilities and / or Medication |
|---|---|---|---|---|---|
| | | | | | |

School Accredited by Texas Education Agency

Active in GT program
Admitted 8-20-96

# GROUP TEST RESULTS

| Grade Placement | E-SS & SC | | MATH | | LET & SOUND | | AURAL COMP | | TOTAL | |
|---|---|---|---|---|---|---|---|---|---|---|
| | R.S. | % | R.S. | % | R.S. | % | R.S. | % | R.S. | % |
| | | | | | | | | | | |

## Achievement and Abilities Testing Results Grades 1 through 5

NAME: LITOFF, DOROTHY
I.D.: 0639163211
GRADE: 3 LEVEL: A FORM: 5
TEST DATE: 9/96 BIRTH DATE: 7/88
AGE: FALL AGE: 8-2
OTHER INFO: 2 TITLE I:

### Cognitive Abilities Test

| TEST | SI SCORE | % ATT | BASE VOCAB | AGE SCORES BAS | PR | S | GRADE SCORES BAS | PR | S |
|---|---|---|---|---|---|---|---|---|---|
| VERB | 65 | 55 | 47 | 111 | 75 | 6 | 209 | 71 | 6 |
| QUAN | 60 | 36 | 36 | 108 | 69 | 6 | 191 | 61 | 6 |
| NONV | 65 | 52 | 48 | 110 | 73 | 6 | 208 | 70 | 6 |
| COMP | | | | 110 | 73 | 6 | 203 | 69 | 6 |

A B C S N E Y Z Key: SAS=Standard Age Scores, PR=Percentile Rank, S=Stanine, LAS=Universal Scale Score

### TAAS CONFIDENTIAL

TEST DATE: 04/97
STUDENT: LITOFF DOROTHY
STUDENT ID (PEIMS): 639163211 DOB: 07/30/88
DISTRICT: 015-915 NORTHSIDE ISD
CAMPUS: 131 DOLORES LINTON EL

GRADE 03

| | TLI | MET MIN. EXPECT. | MASTER ALL OBJ. | ACAD. RECD. |
|---|---|---|---|---|
| READING | 3-94 | YES | YES | YES |
| MATH | 3-93 | YES | YES | YES |

### TAAS CONFIDENTIAL

TEST DATE: 04/98
STUDENT: LITOFF DOROTHY
STUDENT ID (PEIMS): 639163211 DOB: 07/30/88
DISTRICT: 015-915 NORTHSIDE ISD
CAMPUS: 111 COLBY GLASS EL

GRADE 04

| | SCALE SCORE | TLI | MET MIN. EXPECT. | MASTER ALL OBJ. | ACAD. RECD. |
|---|---|---|---|---|---|
| WRITING | 1788 | | YES | YES | |
| READING | | 4-94 | YES | YES | YES |
| MATH | | 4-90 | YES | YES | YES |

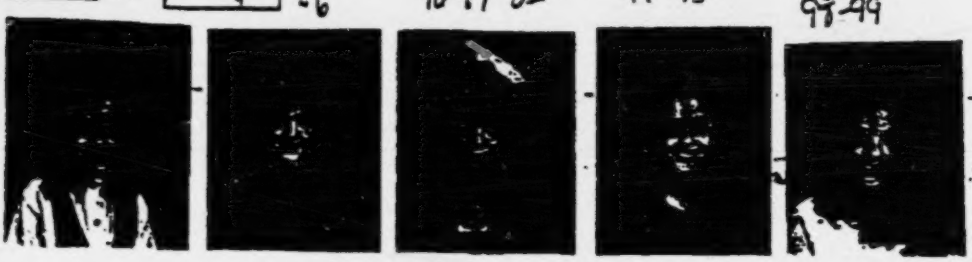
### TAAS CONFIDENTIAL

TEST DATE: 04/99
STUDENT: LITOFF DOROTHY
STUDENT ID (PEIMS): 639163211 DOB: 07/30/88
DISTRICT: 015-915 NORTHSIDE ISD
CAMPUS: 111 COLBY GLASS EL

GRADE 05

| | TLI | MET MIN. EXPECT. | MASTERED ALL OBJ. | ACAD. RECD. |
|---|---|---|---|---|
| READING | 5-95 | YES | YES | YES |
| MATH | 5-98 | YES | YES | |

96-97 3rd 97-98 4th 5th 98-99



# TEXAS ASSESSMENT OF ACADEMIC SKILLS
## CONFIDENTIAL STUDENT REPORT

NAME: DOROTHY LITOFF
STUDENT-ID(PEIMS): 639163211
LOCAL-STUDENT-ID: 0000436082
DATE OF BIRTH: 07/30/88
CLASS GROUP: HILLEMAN

DISTRICT: 015-915 NORTHSIDE ISD
CAMPUS: 131 DOLORES LINTON EL
REPORT DATE: MAY 1997
DATE OF TESTING: SPRING 1997
GRADE: 03

| READING | OBJECTIVE MASTERY* | ITEMS CORRECT/TESTED |
|---|---|---|
| READING COMPREHENSION | | |
| 1. Word Meaning | YES | 7/7 |
| 2. Supporting Ideas | YES | 9/9 |
| 3. Summarization | YES | 5/5 |
| 4. Relationships and Outcomes | YES | 4/4 |
| 5. Inferences and Generalizations | YES | 7/7 |
| 6. Point of View, Propaganda, and Fact and Nonfact | YES | 4/4 |
| TOTAL OBJECTIVES MASTERED: | 6 | TOTAL ITEMS: 36/36 |

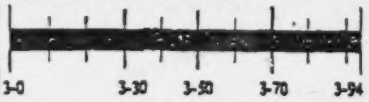
PERFORMANCE STANDARD:
Texas Learning Index of 3-70

TEST RESULTS:
Met Minimum Expectations: YES
Texas Learning Index: 3-94

MASTERED ALL OBJECTIVES

Academic Recognition

Maximum TLI Score Possible: 3-94




| MATHEMATICS | OBJECTIVE MASTERY* | ITEMS CORRECT/TESTED |
|---|---|---|
| CONCEPTS | | |
| 1. Number Concepts | YES | 4/4 |
| 2. Algebraic/Mathematical Relations and Functions | YES | 4/4 |
| 3. Geometric Properties and Relationships | YES | 4/4 |
| 4. Measurement Concepts | YES | 4/4 |
| 5. Probability and Statistics | YES | 4/4 |
| OPERATIONS | | |
| 6. Use of Addition to Solve Problems | YES | 4/4 |
| 7. Use of Subtraction to Solve Problems | YES | 4/4 |
| 8/9. Use of Multiplication/Division to Solve Problems | YES | 4/4 |
| PROBLEM SOLVING | | |
| 10/13. Problem Solving: Estimation/Reasonableness | YES | 4/4 |
| 11. Problem Solving Using Solution Strategies | YES | 4/4 |
| 12. Problem Solving Using Mathematical Representation | YES | 4/4 |
| TOTAL OBJECTIVES MASTERED: | 11 | TOTAL ITEMS: 44/44 |

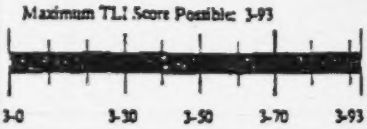
PERFORMANCE STANDARD:
Texas Learning Index of 3-70

TEST RESULTS:
Met Minimum Expectations: YES
Texas Learning Index: 3-93

MASTERED ALL OBJECTIVES

Academic Recognition

Maximum TLI Score Possible: 3-93




DOCUMENT NO.
5248-00525

* Objective mastery standards for multiple-choice items for all subjects areas are as follows: 3/4, 4/5, 5/7, or 7/9 items. You should contact the school to which your results were sent if you desire further explanation.

# TEXAS ASSESSMENT OF ACADEMIC SKILLS
## CONFIDENTIAL STUDENT REPORT

NAME: DOROTHY LITOFF
STUDENT-ID(PEIMS): 639163211
LOCAL-STUDENT-ID: 0000436082
DATE OF BIRTH: 07/30/88
CLASS GROUP: T DINH

DISTRICT: 015-915 NORTHSIDE ISD
CAMPUS: 111 COLBY GLASS EL
REPORT DATE: MAY 1998
DATE OF TESTING: SPRING 1998
GRADE: 04

### WRITING

| | OBJECTIVE MASTERY* | ITEMS CORRECT/TESTED |
|---|---|---|
| WRITTEN COMMUNICATION | | |
| 1-4. Informative Written Composition Rating: 3 | YES | |
| 5. Sentence Construction | YES | 10/10 |
| 6. English Usage | YES | 8/8 |
| 7. Use of Spelling, Capitalization, and Punctuation | YES | 9/10 |
| TOTAL MULTIPLE-CHOICE OBJECTIVES MASTERED: 3 | TOTAL ITEMS: | 27/28 |

PERFORMANCE STANDARD:
Scale Score of 1500 and Written Composition of 2, 3, or 4

TEST RESULTS:
Met Minimum Expectations: YES
Scale Score: 1780

MASTERED ALL OBJECTIVES

### READING

| | OBJECTIVE MASTERY* | ITEMS CORRECT/TESTED |
|---|---|---|
| READING COMPREHENSION | | |
| 1. Word Meaning | YES | 6/6 |
| 2. Supporting Ideas | YES | 7/8 |
| 3. Summarization | YES | 5/6 |
| 4. Relationships and Outcomes | YES | 6/6 |
| 5. Inferences and Generalizations | YES | 10/10 |
| 6. Point of View, Propaganda, and Fact and Nonfact | YES | 4/4 |
| TOTAL OBJECTIVES MASTERED: 6 | TOTAL ITEMS: | 38/40 |

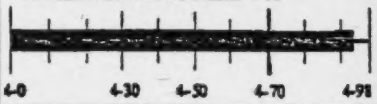
PERFORMANCE STANDARD:
Texas Learning Index of 4-70

TEST RESULTS:
Met Minimum Expectations: YES
Texas Learning Index: 4-94

MASTERED ALL OBJECTIVES

Academic Recognition

Maximum TLI Score Possible: 4-98




### MATHEMATICS

| | OBJECTIVE MASTERY* | ITEMS CORRECT/TESTED |
|---|---|---|
| CONCEPTS | | |
| 1. Number Concepts | YES | 4/4 |
| 2. Algebraic/Mathematical Relations and Functions | YES | 4/4 |
| 3. Geometric Properties and Relationships | YES | 4/4 |
| 4. Measurement Concepts | YES | 4/4 |
| 5. Probability and Statistics | YES | 4/4 |
| OPERATIONS | | |
| 6. Use of Addition to Solve Problems | YES | 4/4 |
| 7. Use of Subtraction to Solve Problems | YES | 3/4 |
| 8. Use of Multiplication to Solve Problems | YES | 4/4 |
| 9. Use of Division to Solve Problems | YES | 4/4 |
| PROBLEM SOLVING | | |
| 10/13. Problem Solving: Estimation/Reasonableness | YES | 6/6 |
| 11. Problem Solving Using Solution Strategies | YES | 4/4 |
| 12. Problem Solving Using Mathematical Representation | YES | 4/4 |
| TOTAL OBJECTIVES MASTERED: 12 | TOTAL ITEMS: | 49/50 |

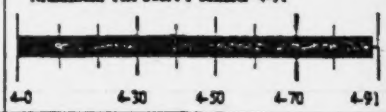
PERFORMANCE STANDARD:
Texas Learning Index of 4-70

TEST RESULTS:
Met Minimum Expectations: YES
Texas Learning Index: 4-90

MASTERED ALL OBJECTIVES

Academic Recognition

Maximum TLI Score Possible: 4-91




DOCUMENT NO.
4536-05535-01356

* Objective mastery standards for multiple-choice items for all subject areas are as follows: 3/4, 5/6, 6/8, or 8/10 items. In writing, a score of 3 or 4 is needed to master objectives 1-4, which are measured by the written composition. You should contact the school to which your results were sent if you need further explanation.

Print # 1-25904-100

LITOFF, DOROTHY E. Class 07 5/31/01 TWINING Student No 32556
LITOFF
ID 000032556 4TH QUARTER REPORT CARD

QT4 current G.P.A. 2.400

| Pd | Subject | Teacher | QT1 | QT2 | QT3 | QT4 | EX | FIN | CM1 | CM2 |
|---|---|---|---|---|---|---|---|---|---|---|
| IT | INTERTWINING | MS. WAGNER | | | | | | | | |
| 1 | LIFE SKILLS | MRS. HOGE | B- | | | | | | | |
| 2 | PHY ED | MS. WAGNER | C+ | C | D | C- | | C | 3 | 12 |
| 2 | ART | MRS. BRATAGE | B | B | A | C | | A | 3 | 6 |
| 3 | LIFE SCIENCE | MR. HOBERG | D | C | B | C | | C | 3 | 3 |
| 4 | LITERATURE | MRS. FREEBER | B- | B+ | | | | B | | |
| 5 | MATH | MR. KJELLBER | B+ | B+ | B+ | A- | | B | 2 | 52 |
| 6 | GEOGRAPHY | MR. MYROLD | B | B | B- | D | | C | 3 | |
| 7 | ENGLISH | MRS. SCRIBNE | C | B | C+ | B | | B- | 3 | |
| 1 | INTRO TO FL | MRS. MORIN | | B | | | | B | | |
| 1 | KEYBRDG I | MRS. FREEBER | | | C- | | | C- | | |
| 4 | HEALTH | MR. NORDLUND | | | C- | B | | B- | 03 | |
| 1 | TECH ED | MR. SCHWANZ | | | | C | | C | 2 | |

| COMMENT | DESCRIPTION |
|---|---|
| 03 | ACCEPTABLE BEHAVIOR |
| 12 | CLASS PARTICIPATION NEEDED |
| 2 | BEHAVIOR NEEDS IMPROVEMENT |
| 3 | ACCEPTABLE BEHAVIOR |
| 52 | DOING A SUPER JOB |
| 6 | ART - FINAL GRADE |

Message:
HAVE A GREAT SUMMER!!

## -GRAND FORKS PUBLIC SCHOOLS-

*"A Great Place to Grow and Learn!"*

1/16/04

0000325S6

QT2 current G.P.A. 2.667

| Subject | Teacher | Q11 | Q12 | EX1 | FIN | QT1 | QT2 |
|---|---|---|---|---|---|---|---|
| ARCH. CADD | MR.N.CARLSON | A | B | | | 4 | |
| BICLOGY | MR.R.BERGH | C | B | C | | 4 | |
| SOPH ENGLISH | MRS. DAHLSTR | C | D | | | 3 | |
| GEOMETRY | MRS. KOHLMEI | B | B | | | 3 | |
| HEALTH | MRS. OASPARI | B | B | A | B | 3 | |
| GLOBAL ED II | MR. ELLINGSO | B | B | | B | 3 | |

MMENT DESCRIPTION
CITIZENSHIP-ACCEPTABLE
CITIZENSHIP-COMMENDABLE

essage:
YOU HAVE AN "ID" FOR A FINAL GRADE DETENTION
IST BE SERVED

## -GRAND FORKS PUBLIC SCHOOLS-

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Central High School
115 N 4th Street
Grand Forks, ND 58203
701-746-2375
FAX# 701-746-2387

LITOFF, DOROTHY E.
07/30/88
539-16-3211

9th Grade

000032556 2002-2003 LITOFF, DOROTH
CUM- 3.00000

| | | |
|---|---|---|
| PREVIOUS CREDITS- | | .000 |
| FRESH ENG-T | B | 1.000 |
| GLOBAL ED-T | B | 1.000 |
| ALG. I-T | B | 1.000 |
| INTRO CADD | A | 1.000 |
| THEAT ART I | C | 1.000 |
| GIRLS P.E. | B | .500 |
| PHY SCI-T | B | 1.000 |
| TOTAL CREDITS- | | 6.500 |

10th Grade

000032556 2003-2004 LITOFF, DOROTH
CUM- 3.00000

| | | |
|---|---|---|
| PREVIOUS CREDITS- | | 6.500 |
| HEALTH | B | .500 |
| GLOBAL ED II | B | .500 |
| TOTAL CREDITS- | | 7.500 |

11th Grade

12th Grade

Date of Enrollment: _____ Date of Graduation: _____

Transfer Date: 2-12-04

# NORTHSIDE INDEPENDENT SCHOOL DISTRICT
## MIDDLE SCHOOL CUMULATIVE RECORD

157a

LITOFF DOROTHY

046 436082 GIRL JUL 30 1988
SSAN: 639163211
10323 OLD FARM

SAN ANTONIO TX 78245

PINTER HELEN 678-0070

Parent or Guardian's:

School Address: E. M. PEASE MIDDLE SCHOOL, 201 HUNT LANE
PHONE # 210-678-2950, SAN ANTONIO, TEXAS 78245

Date Entered 8-11-99 Entered From Colby Glass

Date Withdrawn M Shaw 8-4-00

Date Re-entered _____ Entered From _____

HEALTH INFORMATION

| DATE | VISION | R | L |
|---|---|---|---|
| | with w/o | | |
| | with w/o | | |
| | with w/o | | |
| | with w/o | | |

Grading Scale
A - 90-100
B - 80-89
C - 75-79
D - 70-74
F - 69 and below

ACTIVITIES, HONORS
Information

| Last Name | First | MI | ID 436082 |
|---|---|---|---|
| LITOFF | DOROTHY | | |

CREDIT THIS | TO DATE | SCH YEAR 99-00 | GRADE 06
DAYS PRESENT 173.0 | DAYS ABSENT 4.0 | W/D
CLASS STAND OF E M PEASE MIDDLE SCHOOL

| SUBJECT 639163211 | S | 6-1 | 6-2 | AVG. | CR. | TEACHER |
|---|---|---|---|---|---|---|
| ENGLISH 6OT H T | H | 83 | 87 | 85 | | MATHENY |
| READING 6 H T2 | H | 90 | 88 | 89 | | CORBIN |
| MATH 6 H T | H | 90 | 89 | 90 | | BOUBEL |
| SCIENCE 6 H T2 | H | 85 | 82 | 84 | | MCMILLAN |
| SOC ST 6 OT H TH | H | 89 | 90 | 90 | | SNIDER |
| PE 6 (P/P/6/) | | 93 | | | | NAVARRO |
| SFA 6 (P/P/S/) | | | 95 | | | MORALES |
| FINE ARTS 6 | | 95 | | | | DE ARMOND |
| FINE ARTS 6 | | | 98 | 97 | | SMITH |

Promote [✓] Retain [ ] Place [ ]

Promote [ ] Retain [ ] Place [ ]

Promote [ ] Retain [ ] Place [ ]

Promote [ ] Retain [ ] Place [ ]

School Accredited by: Texas Education Agency, Southern Association of Secondary Schools & Colleges

3200-01B date of withdrawal 7 yrs SEC 3 11-2

DISTRICT TEST D

I.D.: 0839163211
CHAS.: 6 SEX: D
TEST DATE: 9/99 BIRTH DATE: 7/
MARK: FALL AGE: 11
OTHER INFO. GRADE:

| TEST | RAW SCORE | NCE | SS | AGE SCORES RAS | PR | S | GRADE SCORES GES | PR | S |
|---|---|---|---|---|---|---|---|---|---|
| VERB | 65 | 65 | 51 | 113 | 79 | 7 | 242 | 75 | 6 |
| QUAN | 60 | 59 | 55 | 134 | 98 | 9 | 274 | 99 | 9 |
| NONV | 65 | 65 | 54 | 118 | 87 | 7 | 248 | 85 | 7 |
| COMP | | | | 124 | 93 | 8 | 255 | 92 | 8 |

A B C D E V Z Raw Scores, Normal Curve Equivalents, Percentile Ranks, Scaled Scores, Age Scores, Percentile Ranks, Stanines, Grade Scores, Percentile Ranks, Stanines, Instructional Grade Levels

TAAS CONFIDENTIAL

TEST DATE: 04/00
STUDENT: LITOFF DOROTHY
STUDENT-ID (PEIMS): 839163211 DOB: 07/30/88
DISTRICT: 015-915 NORTHSIDE ISD
CAMPUS: 046 E M PEASE MIDDLE

GRADE 06

| | TAI | MET MIN. EXPECT. | MASTERED ALL OBJ. | ACAD. RECG. |
|---|---|---|---|---|
| READING | 6-93 | YES | YES | |
| MATH | 6-91 | YES | YES | YES |

158a

F-12-00

ATHAN F. TWINING ELEMENTARY/MIDDLE SCHOOL
GRAND FORKS PUBLIC SCHOOL DISTRICT
1422 NORTH LOUISIANA STREET
GRAND FORKS AFB ND 58204

SOCIAL SECURITY

DEPARTMENT OF HEALTH & HUMAN SERVICES · USA · SOCIAL SECURITY

039-1[illegible]2

THIS NUMBER HAS BEEN ESTABLISHED FOR

DOROTHY [illegible] LITOFF

SIGNATURE

3200-01B date of withdrawal 7 yrs SEC 3 U-03 0

LITOFF, DOROTHY E. Class 08 TWINING Student No 32556

5/30/02

ID 000032556 4TH QUARTER REPORT CARD

QT4 current G.P.A. 2.286

| Pd | Subject | Teacher | QT1 | QT2 | QT3 | QT4 | EX | FIN | CM1 | CM2 |
|---|---|---|---|---|---|---|---|---|---|---|
| IT | INTERTWINING | MR. HOBERG | | | | | | | | |
| 1 | MATH | MRS. KOOPMAN | B | D | C | B | | C | 3 | |
| 2 | EARTH SCIENC | MR. WELSH | B | D | B | B | B | B | 3 | |
| 3 | LIFE SKILLS | MRS. HOGE | B | B+ | | | | B+ | | |
| 3 | TECH ED | MR. SCHWANZ | | | D | D | | D | 2 | 59 |
| L | 7-8 LUNCH | STAFF | | | | | | | | |
| 4 | U.S. HISTORY | MR. WELSH | C+ | D | B | B | | C | 3 | |
| 5 | ENGLISH | MRS. LAPPEGA | B | D+ | C | C- | A | C | 3 | 59 |
| 6 | ND STUDIES | MR. BAKER | | C | | | | | | |
| 6 | ART | MRS. BRATAGE | | | B | | | B | | |
| 6 | FOREIGN LANG | MRS. MORIN | | | | C | | C | 3 | 7 |
| 7 | PHY ED | MR. NORDLUND | B | D | C | C | | C | 03 | |
| 7 | COMPUTER APP | MRS. FREEBER | B | C- | C | C | | C | 3 | 16 |

COMMENT DESCRIPTION
03 ACCEPTABLE BEHAVIOR
16 NEEDS TO MAKE GOOD USE OF CLASSTIME
2 BEHAVIOR NEEDS IMPROVEMENT
3 ACCEPTABLE BEHAVIOR
59 NOT USING TALENT TO CAPABILITIES
7 MODERN FOREIGN LANGUAGE - FINAL GRADE

Message:

160a

**-GRAND FORKS PUBLIC SCHOOLS-**

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